104TH CONGRESS
2D SESSION

S. 1685

To provide income and economic security to the American family, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 18, 1996

Mr. KERRY introduced the following bill; which was read twice and referred to the Committee on Finance

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A BILL

To provide income and economic security to the American family, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''American Family Income and Economic Security Act of 1996''.

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment

to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) TABLE OF CONTENTS.—

TITLE I—AMERICAN FAMILY ECONOMIC SECURITY

Subtitle A—Wage Security

SEC. 101. INCREASE IN THE MINIMUM WAGE RATE.

Section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) is amended to read as follows:

"(1) except as otherwise provided in this section, not less than $4.25 an hour during the period ending July 3, 1995, not less than $4.70 an hour during the year beginning July 4, 1995, and not less than $5.15 an hour after July 3, 1996;".

Subtitle B—Retirement Security

PART I—IRA DEDUCTION

SEC. 111. INCREASE IN INCOME LIMITATIONS.

(a) IN GENERAL.—Subparagraph (B) of section 219(g)(3) is amended—

(1) by striking ''$40,000'' in clause (i) and inserting ''$80,000'', and

(2) by striking ''$25,000'' in clause (ii) and inserting ''$50,000''.

(b) PHASE-OUT OF LIMITATIONS.—Clause (ii) of section 219(g)(2)(A) is amended by striking ''$10,000'' and inserting ''an amount equal to 10 times the dollar amount applicable for the taxable year under subsection (b)(1)(A)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

SEC. 112. INFLATION ADJUSTMENT FOR DEDUCTIBLE AMOUNT AND INCOME LIMITATIONS.

(a) IN GENERAL.—Section 219 is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

''(h) COST-OF-LIVING ADJUSTMENTS.—

''(1) IN GENERAL.—In the case of any taxable year beginning in a calendar year after 1996, each

dollar amount to which this subsection applies shall be increased by an amount equal to—

"(A) such dollar amount, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting 'calendar year 1995' for 'calendar year 1992' in subparagraph (B) thereof.

"(2) DOLLAR AMOUNTS TO WHICH SUBSECTION APPLIES.—This subsection shall apply to—

"(A) the $2,000 amounts under subsection (b)(1)(A) and (c), and

"(B) the applicable dollar amounts under subsection (g)(3)(B).

"(3) ROUNDING RULES.—

"(A) DEDUCTION AMOUNTS.—If any amount referred to in paragraph (2)(A) as adjusted under paragraph (1) is not a multiple of $500, such amount shall be rounded to the next lowest multiple of $500.

"(B) APPLICABLE DOLLAR AMOUNTS.—If any amount referred to in paragraph (2)(B) as adjusted under paragraph (1) is not a multiple

of $5,000, such amount shall be rounded to the next lowest multiple of $5,000.''

(b) CONFORMING AMENDMENTS.—

(1) Clause (i) of section 219(c)(2)(A) is amended to read as follows:

''(i) the sum of $250 and the dollar amount in effect for the taxable year under subsection (b)(1)(A), or''.

(2) Section 408(a)(1) is amended by striking ''in excess of $2,000 on behalf of any individual'' and inserting ''on behalf of any individual in excess of the amount in effect for such taxable year under section 219(b)(1)(A)''.

(3) Section 408(b)(2)(B) is amended by striking ''$2,000'' and inserting ''the dollar amount in effect under section 219(b)(1)(A)''.

(4) Subparagraph (A) of section 408(d)(5) is amended by striking ''$2,250'' and inserting ''the dollar amount in effect for the taxable year under section 219(c)(2)(A)(i)''.

(5) Section 408(j) is amended by striking ''$2,000''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

SEC. 113. COORDINATION OF IRA DEDUCTION LIMIT WITH ELECTIVE DEFERRAL LIMIT.

(a) IN GENERAL.—Section 219(b) (relating to maximum amount of deduction) is amended by adding at the end the following new paragraph:

''(4) COORDINATION WITH ELECTIVE DEFERRAL LIMIT.—The amount determined under paragraph (1) or subsection (c)(2) with respect to any individual for any taxable year shall not exceed the excess (if any) of—

''(A) the limitation applicable for the taxable year under section 402(g)(1), over

''(B) the elective deferrals (as defined in section 402(g)(3)) of such individual for such taxable year.''

(b) CONFORMING AMENDMENT.—Section 219(c) is amended by adding at the end the following new paragraph:

''(3) CROSS REFERENCE.—

''For reduction in paragraph (2) amount, see subsection (b)(4).''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

PART II—NONDEDUCTIBLE TAX-FREE IRAs

SEC. 116. ESTABLISHMENT OF NONDEDUCTIBLE TAX-FREE INDIVIDUAL RETIREMENT ACCOUNTS.

(a) IN GENERAL.—Subpart A of part I of subchapter D of chapter 1 (relating to pension, profit-sharing, stock bonus plans, etc.) is amended by inserting after section 408 the following new section:

"SEC. 408A. SPECIAL INDIVIDUAL RETIREMENT ACCOUNTS.

"(a) GENERAL RULE.—Except as provided in this chapter, a special individual retirement account shall be treated for purposes of this title in the same manner as an individual retirement plan.

"(b) SPECIAL INDIVIDUAL RETIREMENT ACCOUNT.—For purposes of this title, the term 'special individual retirement account' means an individual retirement plan which is designated at the time of establishment of the plan as a special individual retirement account.

"(c) TREATMENT OF CONTRIBUTIONS.—

"(1) NO DEDUCTION ALLOWED.—No deduction shall be allowed under section 219 for a contribution to a special individual retirement account.

"(2) CONTRIBUTION LIMIT.—The aggregate amount of contributions for any taxable year to all special individual retirement accounts maintained for the benefit of an individual shall not exceed the excess (if any) of—

"(A) the maximum amount allowable as a deduction under section 219 with respect to such individual for such taxable year, over

"(B) the amount so allowed.

"(3) SPECIAL RULES FOR QUALIFIED TRANSFERS.—

"(A) IN GENERAL.—No rollover contribution may be made to a special individual retirement account unless it is a qualified transfer.

"(B) LIMIT NOT TO APPLY.—The limitation under paragraph (2) shall not apply to a qualified transfer to a special individual retirement account.

"(d) TAX TREATMENT OF DISTRIBUTIONS.—

"(1) IN GENERAL.—Except as provided in this subsection, any amount paid or distributed out of a special individual retirement account shall not be included in the gross income of the distributee.

"(2) EXCEPTION FOR EARNINGS ON CONTRIBUTIONS HELD LESS THAN 5 YEARS.—

"(A) IN GENERAL.—Any amount distributed out of a special individual retirement account which consists of earnings allocable to contributions made to the account during the 5-year period ending on the day before such dis-

tribution shall be included in the gross income of the distributee for the taxable year in which the distribution occurs.

"(B) ORDERING RULE.—

"(i) FIRST-IN, FIRST-OUT RULE.—Distributions from a special individual retirement account shall be treated as having been made—

"(I) first from the earliest contribution (and earnings allocable thereto) remaining in the account at the time of the distribution, and

"(II) then from other contributions (and earnings allocable thereto) in the order in which made.

"(ii) ALLOCATIONS BETWEEN CONTRIBUTIONS AND EARNINGS.—Any portion of a distribution allocated to a contribution (and earnings allocable thereto) shall be treated as allocated first to the earnings and then to the contribution.

"(iii) ALLOCATION OF EARNINGS.—Earnings shall be allocated to a contribution in such manner as the Secretary may by regulations prescribe.

''(iv) CONTRIBUTIONS IN SAME YEAR.—Except as provided in regulations, all contributions made during the same taxable year may be treated as 1 contribution for purposes of this subparagraph.

''(C) CROSS REFERENCE.—

"For additional tax for early withdrawal, see section 72(t).

''(3) QUALIFIED TRANSFER.—

''(A) IN GENERAL.—Paragraph (2) shall not apply to any distribution which is transferred in a qualified transfer to another special individual retirement account.

''(B) CONTRIBUTION PERIOD.—For purposes of paragraph (2), the special individual retirement account to which any contributions are transferred shall be treated as having held such contributions during any period such contributions were held (or are treated as held under this subparagraph) by the special individual retirement account from which transferred.

''(4) SPECIAL RULES RELATING TO CERTAIN TRANSFERS.—

''(A) IN GENERAL.—Notwithstanding any other provision of law, in the case of a qualified transfer to a special individual retirement ac-

count from an individual retirement plan which is not a special individual retirement account—

"(i) there shall be included in gross income any amount which, but for the qualified transfer, would be includible in gross income, but

"(ii) section 72(t) shall not apply to such amount.

"(B) TIME FOR INCLUSION.—In the case of any qualified transfer which occurs before January 1, 1997, any amount includible in gross income under subparagraph (A) with respect to such contribution shall be includible ratably over the 4-taxable year period beginning in the taxable year in which the amount was paid or distributed out of the individual retirement plan.

"(e) QUALIFIED TRANSFER.—

"(1) IN GENERAL.—The term 'qualified transfer' means a transfer to a special individual retirement account from another such account or from an individual retirement plan but only if such transfer meets the requirements of section 408(d)(3).

"(2) LIMITATION.—A transfer otherwise described in paragraph (1) shall not be treated as a

qualified transfer if the taxpayer's adjusted gross income for the taxable year of the transfer exceeds the sum of—

"(A) the applicable dollar amount, plus

"(B) the dollar amount applicable for the taxable year under section 219(g)(2)(A)(ii).

This paragraph shall not apply to a transfer from a special individual retirement account to another special individual retirement account.

"(3) DEFINITIONS.—For purposes of this subsection, the terms 'adjusted gross income' and 'applicable dollar amount' have the meanings given such terms by section 219(g)(3), except subparagraph (A)(ii) thereof shall be applied without regard to the phrase 'or the deduction allowable under this section'."

(b) EARLY WITHDRAWAL PENALTY.—Section 72(t) is amended by adding at the end the following new paragraph:

"(6) RULES RELATING TO SPECIAL INDIVIDUAL RETIREMENT ACCOUNTS.—In the case of a special individual retirement account under section 408A—

"(A) this subsection shall only apply to distributions out of such account which consist of earnings allocable to contributions made to

the account during the 5-year period ending on the day before such distribution, and

"(B) paragraph (2)(A)(i) shall not apply to any distribution described in subparagraph (A)."

(c) EXCESS CONTRIBUTIONS.—Section 4973(b) is amended by adding at the end the following new sentence: "For purposes of paragraphs (1)(B) and (2)(C), the amount allowable as a deduction under section 219 shall be computed without regard to section 408A."

(d) CONFORMING AMENDMENT.—The table of sections for subpart A of part I of subchapter D of chapter 1 is amended by inserting after the item relating to section 408 the following new item:

"Sec. 408A. Special individual retirement accounts."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

PART III—PENALTY-FREE DISTRIBUTIONS

SEC. 121. DISTRIBUTIONS FROM CERTAIN PLANS MAY BE USED WITHOUT PENALTY TO PURCHASE FIRST HOMES, TO PAY HIGHER EDUCATION OR FINANCIALLY DEVASTATING MEDICAL EXPENSES, OR BY THE UNEMPLOYED.

(a) IN GENERAL.—Paragraph (2) of section 72(t) (relating to exceptions to 10-percent additional tax on

early distributions from qualified retirement plans) is amended by adding at the end the following new subparagraph:

"(D) DISTRIBUTIONS FROM CERTAIN PLANS FOR FIRST HOME PURCHASES OR EDUCATIONAL EXPENSES.—Distributions to an individual from an individual retirement plan—

"(i) which are qualified first-time homebuyer distributions (as defined in paragraph (7)); or

"(ii) to the extent such distributions do not exceed the qualified higher education expenses (as defined in paragraph (8)) of the taxpayer for the taxable year."

(b) FINANCIALLY DEVASTATING MEDICAL EXPENSES.—

(1) IN GENERAL.—Section 72(t)(3)(A) is amended by striking "(B),".

(2) CERTAIN LINEAL DESCENDANTS AND ANCESTORS TREATED AS DEPENDENTS AND LONG-TERM CARE SERVICES TREATED AS MEDICAL CARE.—Subparagraph (B) of section 72(t)(2) is amended by striking "medical care" and all that follows and inserting "medical care determined—

''(i) without regard to whether the employee itemizes deductions for such taxable year, and

''(ii) in the case of an individual retirement plan—

''(I) by treating such employee's dependents as including all children, grandchildren and ancestors of the employee or such employee's spouse and

''(II) by treating qualified long-term care services (as defined in paragraph (9)) as medical care for purposes of this subparagraph (B).''

(3) CONFORMING AMENDMENT.—Subparagraph (B) of section 72(t)(2) is amended by striking ''or (C)'' and inserting '', (C) or (D)''.

(c) DEFINITIONS.—Section 72(t), as amended by this Act, is amended by adding at the end the following new paragraphs:

''(7) QUALIFIED FIRST-TIME HOMEBUYER DISTRIBUTIONS.—For purposes of paragraph (2)(D)(i):

''(A) IN GENERAL.—The term 'qualified first-time homebuyer distribution' means any payment or distribution received by an individ-

ual to the extent such payment or distribution is used by the individual before the close of the 60th day after the day on which such payment or distribution is received to pay qualified acquisition costs with respect to a principal residence of a first-time homebuyer who is such individual or the spouse, child (as defined in section 151(c)(3)), or grandchild of such individual.

''(B) QUALIFIED ACQUISITION COSTS.—For purposes of this paragraph, the term 'qualified acquisition costs' means the costs of acquiring, constructing, or reconstructing a residence. Such term includes any usual or reasonable settlement, financing, or other closing costs.

''(C) FIRST-TIME HOMEBUYER; OTHER DEFINITIONS.—For purposes of this paragraph:

''(i) FIRST-TIME HOMEBUYER.—The term 'first-time homebuyer' means any individual if—

''(I) such individual (and if married, such individual's spouse) had no present ownership interest in a principal residence during the 3-year pe-

riod ending on the date of acquisition of the principal residence to which this paragraph applies, and

"(II) subsection (h) or (k) of section 1034 did not suspend the running of any period of time specified in section 1034 with respect to such individual on the day before the date the distribution is applied pursuant to subparagraph (A).

In the case of an individual described in section 143(i)(1)(C) for any year, an ownership interest shall not include any interest under a contract of deed described in such section. An individual who loses an ownership interest in a principal residence incident to a divorce or legal separation is deemed for purposes of this subparagraph to have had no ownership interest in such principal residence within the period referred to in subparagraph (A)(II).

"(ii) PRINCIPAL RESIDENCE.—The term 'principal residence' has the same meaning as when used in section 1034.

"(iii) DATE OF ACQUISITION.—The term 'date of acquisition' means the date—

"(I) on which a binding contract to acquire the principal residence to which subparagraph (A) applies is entered into, or

"(II) on which construction or reconstruction of such a principal residence is commenced.

"(D) SPECIAL RULE WHERE DELAY IN ACQUISITION.—If any distribution from any individual retirement plan fails to meet the requirements of subparagraph (A) solely by reason of a delay or cancellation of the purchase or construction of the residence, the amount of the distribution may be contributed to an individual retirement plan as provided in section 408(d)(3)(A)(i) (determined by substituting '120 days' for '60 days' in such section), except that—

"(i) section 408(d)(3)(B) shall not be applied to such contribution, and

"(ii) such amount shall not be taken into account in determining whether sec-

tion 408(d)(3)(A)(i) applies to any other amount.

''(8) QUALIFIED HIGHER EDUCATION EXPENSES.—For purposes of paragraph (2)(D)(ii)—

''(A) IN GENERAL.—The term 'qualified higher education expenses' means tuition and fees required for the enrollment or attendance of—

''(i) the taxpayer,

''(ii) the taxpayer's spouse,

''(iii) a dependent of the taxpayer with respect to whom the taxpayer is allowed a deduction under section 151, or

''(iv) the taxpayer's child (as defined in section 151(c)(3)) or grandchild,

as an eligible student at an institution of higher education (as defined in paragraphs (1)(D) and (2) of section 220(c)).

''(B) EXCEPTIONS.—The term 'qualified higher education expenses' does not include expenses described in subparagraphs (B) and (C) of section 220(c)(1).

''(C) COORDINATION WITH SAVINGS BOND PROVISIONS.—The amount of qualified higher education expenses for any taxable year shall be

reduced by any amount excludable from gross income under section 135.

''(9) QUALIFIED LONG-TERM CARE SERVICES.—For purposes of paragraph (2)(B):

''(A) IN GENERAL.—The term 'qualified long-term care services' means necessary diagnostic, curing, mitigating, treating, preventive, therapeutic, and rehabilitative services, and maintenance and personal care services (whether performed in a residential or nonresidential setting) which—

''(i) are required by an individual during any period the individual is an incapacitated individual (as defined in subparagraph (B)),

''(ii) have as their primary purpose—

''(I) the provision of needed assistance with 1 or more activities of daily living (as defined in subparagraph (C)), or

''(II) protection from threats to health and safety due to severe cognitive impairment, and

''(iii) are provided pursuant to a continuing plan of care prescribed by a li-

censed professional (as defined in subparagraph (D)).

"(B) INCAPACITATED INDIVIDUAL.—The term 'incapacitated individual' means any individual who—

"(i) is unable to perform, without substantial assistance from another individual (including assistance involving cueing or substantial supervision), at least 2 activities of daily living as defined in subparagraph (C), or

"(ii) has severe cognitive impairment as defined by the Secretary in consultation with the Secretary of Health and Human Services.

Such term shall not include any individual otherwise meeting the requirements of the preceding sentence unless a licensed professional within the preceding 12-month period has certified that such individual meets such requirements.

"(C) ACTIVITIES OF DAILY LIVING.—Each of the following is an activity of daily living:

"(i) Eating.

"(ii) Toileting.

"(iii) Transferring.

''(iv) Bathing.

''(v) Dressing.

''(D) LICENSED PROFESSIONAL.—The term 'licensed professional' means—

''(i) a physician or registered professional nurse, or

''(ii) any other individual who meets such requirements as may be prescribed by the Secretary after consultation with the Secretary of Health and Human Services.

''(E) CERTAIN SERVICES NOT INCLUDED.—The term 'qualified long-term care services' shall not include any services provided to an individual—

''(i) by a relative (directly or through a partnership, corporation, or other entity) unless the relative is a licensed professional with respect to such services, or

''(ii) by a corporation or partnership which is related (within the meaning of section 267(b) or 707(b)) to the individual.

For purposes of this subparagraph, the term 'relative' means an individual bearing a relationship to the individual which is described in paragraphs (1) through (8) of section 152(a).''

(d) PENALTY-FREE DISTRIBUTIONS FOR CERTAIN UNEMPLOYED INDIVIDUALS.—Paragraph (2) of section 72(t) is amended by adding at the end the following new subparagraph:

"(E) DISTRIBUTIONS TO UNEMPLOYED INDIVIDUALS.—A distribution from an individual retirement plan to an individual after separation from employment, if—

"(i) such individual has received unemployment compensation for 12 consecutive weeks under any Federal or State unemployment compensation law by reason of such separation, and

"(ii) such distributions are made during any taxable year during which such unemployment compensation is paid or the succeeding taxable year."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to payments and distributions after December 31, 1995.

SEC. 122. CONTRIBUTIONS MUST BE HELD AT LEAST 5 YEARS IN CERTAIN CASES.

(a) IN GENERAL.—Section 72(t), as amended by this Act, is amended by adding at the end the following new paragraph:

''(10) CERTAIN CONTRIBUTIONS MUST BE HELD 5 YEARS.—

''(A) IN GENERAL.—Paragraph (2)(A)(i) shall not apply to any amount distributed out of an individual retirement plan (other than a special individual retirement account) which is allocable to contributions made to the plan during the 5-year period ending on the date of such distribution (and earnings on such contributions).

''(B) ORDERING RULE.—For purposes of this paragraph, distributions shall be treated as having been made—

''(i) first from the earliest contribution (and earnings allocable thereto) remaining in the account at the time of the distribution, and

''(ii) then from other contributions (and earnings allocable thereto) in the order in which made.

Earnings shall be allocated to contributions in such manner as the Secretary may prescribe.

''(C) SPECIAL RULE FOR ROLLOVERS.—

''(i) PENSION PLANS.—Subparagraph (A) shall not apply to distributions out of

an individual retirement plan which are allocable to rollover contributions to which section 402(c), 403(a)(4), or 403(b)(8) applied.

''(ii) CONTRIBUTION PERIOD.—For purposes of subparagraph (A), amounts shall be treated as having been held by a plan during any period such contributions were held (or are treated as held under this clause) by any individual retirement plan from which transferred.

''(D) SPECIAL ACCOUNTS.—For rules applicable to special individual retirement accounts under section 408A, see paragraph (8).''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to contributions (and earnings allocable thereto) which are made after December 31, 1995.

PART IV—PLAN LOANS

SEC. 126. LOAN REQUIREMENTS FOR DEFINED CONTRIBUTION PLANS.

(a) IN GENERAL.—Section 401(a) is amended by inserting after paragraph (34) the following new paragraph:

''(35) LOAN REQUIREMENTS FOR DEFINED CONTRIBUTION PLANS.—A trust which is part of a defined contribution plan shall not constitute a

qualified trust under this section unless the plan provides that a participant may, subject to the provisions of section 72(p), obtain a loan from the plan for the purpose of—

"(A) purchasing a principal residence,

"(B) paying qualified higher education expenses (as defined in section 72(t)(8)),

"(C) paying for medical expenses described in section 72(t)(2)(B), or

"(D) alleviating financial hardship.

In no event shall a plan be required to make a loan to a participant under this paragraph in an amount in excess of the nonforfeitable balance to the credit of the participant under the plan."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to years beginning after December 31, 1996, except that any plan amendment by reason of such amendment shall not required to be made before January 1, 1998, if the plan is operated in accordance with such amendment for years beginning in 1997.

Subtitle C—Health Security

PART I—DEFINITIONS

SEC. 131. DEFINITIONS.

As used in this subtitle:

(1) BENEFICIARY.—The term ''beneficiary'' has the meaning given such term under section 3(8) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(8)).

(2) EMPLOYEE.—The term ''employee'' has the meaning given such term under section 3(6) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(6)).

(3) EMPLOYER.—The term ''employer'' has the meaning given such term under section 3(5) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(5)), except that such term shall include only employers of two or more employees.

(4) EMPLOYEE HEALTH BENEFIT PLAN.—

(A) IN GENERAL.—The term ''employee health benefit plan'' means any employee welfare benefit plan, governmental plan, or church plan (as defined under paragraphs (1), (32), and (33) of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002 (1), (32), and (33))) that provides or pays for health benefits (such as provider and hospital benefits) for participants and beneficiaries whether—

(i) directly;

(ii) through a group health plan offered by a health plan issuer as defined in paragraph (8); or

(iii) otherwise.

(B) RULE OF CONSTRUCTION.—An employee health benefit plan shall not be construed to be a group health plan, an individual health plan, or a health plan issuer.

(C) ARRANGEMENTS NOT INCLUDED.—Such term does not include the following, or any combination thereof:

(i) Coverage only for accident, or disability income insurance, or any combination thereof.

(ii) Medicare supplemental health insurance (as defined under section 1882(g)(1) of the Social Security Act).

(iii) Coverage issued as a supplement to liability insurance.

(iv) Liability insurance, including general liability insurance and automobile liability insurance.

(v) Workers compensation or similar insurance.

(vi) Automobile medical payment insurance.

(vii) Coverage for a specified disease or illness.

(viii) Hospital or fixed indemnity insurance.

(ix) Short-term limited duration insurance.

(x) Credit-only, dental-only, or vision-only insurance.

(xi) A health insurance policy providing benefits only for long-term care, nursing home care, home health care, community-based care, or any combination thereof.

(5) FAMILY.—

(A) IN GENERAL.—The term ''family'' means an individual, the individual's spouse, and the child of the individual (if any).

(B) CHILD.—For purposes of subparagraph (A), the term ''child'' means any individual who is a child within the meaning of section 151(c)(3) of the Internal Revenue Code of 1986.

(6) GROUP HEALTH PLAN.—

(A) IN GENERAL.—The term ''group health plan'' means any contract, policy, certificate or other arrangement offered by a health plan issuer to a group purchaser that provides or pays for health benefits (such as provider and hospital benefits) in connection with an employee health benefit plan.

(B) ARRANGEMENTS NOT INCLUDED.—Such term does not include the following, or any combination thereof:

(i) Coverage only for accident, or disability income insurance, or any combination thereof.

(ii) Medicare supplemental health insurance (as defined under section 1882(g)(1) of the Social Security Act).

(iii) Coverage issued as a supplement to liability insurance.

(iv) Liability insurance, including general liability insurance and automobile liability insurance.

(v) Workers compensation or similar insurance.

(vi) Automobile medical payment insurance.

(vii) Coverage for a specified disease or illness.

(viii) Hospital or fixed indemnity insurance.

(ix) Short-term limited duration insurance.

(x) Credit-only, dental-only, or vision-only insurance.

(xi) A health insurance policy providing benefits only for long-term care, nursing home care, home health care, community-based care, or any combination thereof.

(7) GROUP PURCHASER.—The term ''group purchaser'' means any person (as defined under paragraph (9) of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(9)) or entity that purchases or pays for health benefits (such as provider or hospital benefits) on behalf of two or more participants or beneficiaries in connection with an employee health benefit plan. A health plan purchasing cooperative established under section 131 shall not be considered to be a group purchaser.

(8) HEALTH PLAN ISSUER.—The term ''health plan issuer'' means any entity that is licensed (prior to or after the date of enactment of this Act) by a State to offer a group health plan or an individual health plan.

(9) PARTICIPANT.—The term ''participant'' has the meaning given such term under section 3(7) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(7)).

(10) PLAN SPONSOR.—The term ''plan sponsor'' has the meaning given such term under section 3(16)(B) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(16)(B)).

(11) SECRETARY.—The term ''Secretary'', unless specifically provided otherwise, means the Secretary of Labor.

(12) STATE.—The term ''State'' means each of the several States, the District of Columbia, Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

PART II—HEALTH CARE ACCESS, PORTABILITY, AND RENEWABILITY

Subpart A—Group Market Rules

SEC. 135. GUARANTEED AVAILABILITY OF HEALTH COVERAGE.

(a) IN GENERAL.—

(1) NONDISCRIMINATION.—Except as provided in subsection (b), sections 136 and 137—

(A) a health plan issuer offering a group health plan may not decline to offer whole group coverage to a group purchaser desiring to purchase such coverage; and

(B) an employee health benefit plan or a health plan issuer offering a group health plan may establish eligibility, continuation of eligibility, enrollment, or premium contribution requirements under the terms of such plan, except that such requirements shall not be based on health status, medical condition, claims experience, receipt of health care, medical history, evidence of insurability, or disability.

(2) HEALTH PROMOTION AND DISEASE PREVENTION.—Nothing in this subsection shall prevent an employee health benefit plan or a health plan issuer from establishing premium discounts or modifying otherwise applicable copayments or deductibles

in return for adherence to programs of health promotion and disease prevention.

(b) APPLICATION OF CAPACITY LIMITS.—

(1) IN GENERAL.—Subject to paragraph (2), a health plan issuer offering a group health plan may cease offering coverage to group purchasers under the plan if—

(A) the health plan issuer ceases to offer coverage to any additional group purchasers; and

(B) the health plan issuer can demonstrate to the applicable certifying authority (as defined in section 172(d)), if required, that its financial or provider capacity to serve previously covered participants and beneficiaries (and additional participants and beneficiaries who will be expected to enroll because of their affiliation with a group purchaser or such previously covered participants or beneficiaries) will be impaired if the health plan issuer is required to offer coverage to additional group purchasers.

Such health plan issuer shall be prohibited from offering coverage after a cessation in offering coverage under this paragraph for a 6-month period or until the health plan issuer can demonstrate to the appli-

cable certifying authority (as defined in section 172(d)) that the health plan issuer has adequate capacity, whichever is later.

(2) FIRST-COME-FIRST-SERVED.—A health plan issuer offering a group health plan is only eligible to exercise the limitations provided for in paragraph (1) if the health plan issuer offers coverage to group purchasers under such plan on a first-come-first-served basis or other basis established by a State to ensure a fair opportunity to enroll in the plan and avoid risk selection.

(c) CONSTRUCTION.—

(1) MARKETING OF GROUP HEALTH PLANS.—Nothing in this section shall be construed to prevent a State from requiring health plan issuers offering group health plans to actively market such plans.

(2) INVOLUNTARY OFFERING OF GROUP HEALTH PLANS.—Nothing in this section shall be construed to require a health plan issuer to involuntarily offer group health plans in a particular market. For the purposes of this paragraph, the term ''market'' means either the large employer market or the small employer market (as defined under applicable State law, or if not so defined, an employer with not more than 50 employees).

SEC. 136. GUARANTEED RENEWABILITY OF HEALTH COVERAGE.

(a) IN GENERAL.—

(1) GROUP PURCHASER.—Subject to subsections (b) and (c), a group health plan shall be renewed or continued in force by a health plan issuer at the option of the group purchaser, except that the requirement of this subparagraph shall not apply in the case of—

(A) the nonpayment of premiums or contributions by the group purchaser in accordance with the terms of the group health plan or where the health plan issuer has not received timely premium payments;

(B) fraud or misrepresentation of material fact on the part of the group purchaser;

(C) the termination of the group health plan in accordance with subsection (b); or

(D) the failure of the group purchaser to meet contribution or participation requirements in accordance with paragraph (3).

(2) PARTICIPANT.—Subject to subsections (b) and (c), coverage under an employee health benefit plan or group health plan shall be renewed or continued in force, if the group purchaser elects to continue to provide coverage under such plan, at the op-

tion of the participant (or beneficiary where such right exists under the terms of the plan or under applicable law), except that the requirement of this paragraph shall not apply in the case of—

(A) the nonpayment of premiums or contributions by the participant or beneficiary in accordance with the terms of the employee health benefit plan or group health plan or where such plan has not received timely premium payments;

(B) fraud or misrepresentation of material fact on the part of the participant or beneficiary relating to an application for coverage or claim for benefits;

(C) the termination of the employee health benefit plan or group health plan;

(D) loss of eligibility for continuation coverage as described in part 6 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1161 et seq.); or

(E) failure of a participant or beneficiary to meet requirements for eligibility for coverage under an employee health benefit plan or group health plan that are not prohibited by this Act.

(3) RULES OF CONSTRUCTION.—Nothing in this subsection, nor in section 135(a), shall be construed to—

(A) preclude a health plan issuer from establishing employer contribution rules or group participation rules for group health plans as allowed under applicable State law;

(B) preclude a plan defined in section 3(37) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1102(37)) from establishing employer contribution rules or group participation rules; or

(C) permit individuals to decline coverage under an employee health benefit plan if such right is not otherwise available under such plan.

(b) TERMINATION OF GROUP HEALTH PLANS.—

(1) PARTICULAR TYPE OF GROUP HEALTH PLAN NOT OFFERED.—In any case in which a health plan issuer decides to discontinue offering a particular type of group health plan, a group health plan of such type may be discontinued by the health plan issuer only if—

(A) the health plan issuer provides notice to each group purchaser covered under a group health plan of this type (and participants and

beneficiaries covered under such group health plan) of such discontinuation at least 90 days prior to the date of the discontinuation of such plan;

(B) the health plan issuer offers to each group purchaser covered under a group health plan of this type, the option to purchase any other group health plan currently being offered by the health plan issuer; and

(C) in exercising the option to discontinue a group health plan of this type and in offering one or more replacement plans, the health plan issuer acts uniformly without regard to the health status or insurability of participants or beneficiaries covered under the group health plan, or new participants or beneficiaries who may become eligible for coverage under the group health plan.

(2) DISCONTINUANCE OF ALL GROUP HEALTH PLANS.—

(A) IN GENERAL.—In any case in which a health plan issuer elects to discontinue offering all group health plans in a State, a group health plan may be discontinued by the health plan issuer only if—

(i) the health plan issuer provides notice to the applicable certifying authority (as defined in section 172(d)) and to each group purchaser (and participants and beneficiaries covered under such group health plan) of such discontinuation at least 180 days prior to the date of the expiration of such plan; and

(ii) all group health plans issued or delivered for issuance in the State are discontinued and coverage under such plans is not renewed.

(B) APPLICATION OF PROVISIONS.—The provisions of this paragraph and paragraph (3) may be applied separately by a health plan issuer—

(i) to all group health plans offered to small employers (as defined under applicable State law, or if not so defined, an employer with not more than 50 employees); or

(ii) to all other group health plans offered by the health plan issuer in the State.

(3) PROHIBITION ON MARKET REENTRY.—In the case of a discontinuation under paragraph (2), the health plan issuer may not provide for the issuance of any group health plan in the market sector (as described in paragraph (2)(B)) in which issuance of such group health plan was discontinued in the State involved during the 5-year period beginning on the date of the discontinuation of the last group health plan not so renewed.

(c) TREATMENT OF NETWORK PLANS.—

(1) GEOGRAPHIC LIMITATIONS.—A network plan (as defined in paragraph (2)) may deny continued participation under such plan to participants or beneficiaries who neither live, reside, nor work in an area in which such network plan is offered, but only if such denial is applied uniformly, without regard to health status or the insurability of particular participants or beneficiaries.

(2) NETWORK PLAN.—As used in paragraph (1), the term ''network plan'' means an employee health benefit plan or a group health plan that arranges for the financing and delivery of health care services to participants or beneficiaries covered under such plan, in whole or in part, through arrangements with providers.

(d) COBRA COVERAGE.—Nothing in subsection (a)(2)(E) or subsection (c) shall be construed to affect any right to COBRA continuation coverage as described in part 6 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1161 et seq.).

SEC. 137. PORTABILITY OF HEALTH COVERAGE AND LIMITATION ON PREEXISTING CONDITION EXCLUSIONS.

(a) IN GENERAL.—An employee health benefit plan or a health plan issuer offering a group health plan may impose a limitation or exclusion of benefits relating to treatment of a preexisting condition based on the fact that the condition existed prior to the coverage of the participant or beneficiary under the plan only if—

(1) the limitation or exclusion extends for a period of not more than 12 months after the date of enrollment in the plan;

(2) the limitation or exclusion does not apply to an individual who, within 30 days of the date of birth or placement for adoption (as determined under section 609(c)(3)(B) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1169(c)(3)(B)), was covered under the plan; and

(3) the limitation or exclusion does not apply to a pregnancy.

(b) CREDITING OF PREVIOUS QUALIFYING COVERAGE.—

(1) IN GENERAL.—Subject to paragraph (4), an employee health benefit plan or a health plan issuer offering a group health plan shall provide that if a participant or beneficiary is in a period of previous qualifying coverage as of the date of enrollment under such plan, any period of exclusion or limitation of coverage with respect to a preexisting condition shall be reduced by 1 month for each month in which the participant or beneficiary was in the period of previous qualifying coverage. With respect to an individual described in subsection (a)(2) who maintains continuous coverage, no limitation or exclusion of benefits relating to treatment of a preexisting condition may be applied to a child within the child's first 12 months of life or within 12 months after the placement of a child for adoption.

(2) DISCHARGE OF DUTY.—An employee health benefit plan shall provide documentation of coverage to participants and beneficiaries whose coverage is terminated under the plan. Pursuant to regulations promulgated by the Secretary, the duty of an employee health benefit plan to verify previous qualifying coverage with respect to a participant or bene-

ficiary is effectively discharged when such employee health benefit plan provides documentation to a participant or beneficiary that includes the following information:

(A) the dates that the participant or beneficiary was covered under the plan; and

(B) the benefits and cost-sharing arrangement available to the participant or beneficiary under such plan.

An employee health benefit plan shall retain the documentation provided to a participant or beneficiary under subparagraphs (A) and (B) for at least the 12-month period following the date on which the participant or beneficiary ceases to be covered under the plan. Upon request, an employee health benefit plan shall provide a second copy of such documentation to such participant or beneficiary within the 12-month period following the date of such ineligibility.

(3) DEFINITIONS.—As used in this section:

(A) PREVIOUS QUALIFYING COVERAGE.—The term ''previous qualifying coverage'' means the period beginning on the date—

(i) a participant or beneficiary is enrolled under an employee health benefit plan or a group health plan, and ending on

the date the participant or beneficiary is not so enrolled; or

(ii) an individual is enrolled under an individual health plan (as defined in section 144) or under a public or private health plan established under Federal or State law, and ending on the date the individual is not so enrolled;

for a continuous period of more than 30 days (without regard to any waiting period).

(B) LIMITATION OR EXCLUSION OF BENEFITS RELATING TO TREATMENT OF A PREEXISTING CONDITION.—The term ''limitation or exclusion of benefits relating to treatment of a preexisting condition'' means a limitation or exclusion of benefits imposed on an individual based on a preexisting condition of such individual.

(4) EFFECT OF PREVIOUS COVERAGE.—An employee health benefit plan or a health plan issuer offering a group health plan may impose a limitation or exclusion of benefits relating to the treatment of a preexisting condition, subject to the limits in subsection (a)(1), only to the extent that such service or benefit was not previously covered under the

group health plan, employee health benefit plan, or individual health plan in which the participant or beneficiary was enrolled immediately prior to enrollment in the plan involved.

(c) LATE ENROLLEES.—Except as provided in section 138, with respect to a participant or beneficiary enrolling in an employee health benefit plan or a group health plan during a time that is other than the first opportunity to enroll during an enrollment period of at least 30 days, coverage with respect to benefits or services relating to the treatment of a preexisting condition in accordance with subsections (a) and (b) may be excluded, except the period of such exclusion may not exceed 18 months beginning on the date of coverage under the plan.

(d) AFFILIATION PERIODS.—With respect to a participant or beneficiary who would otherwise be eligible to receive benefits under an employee health benefit plan or a group health plan but for the operation of a preexisting condition limitation or exclusion, if such plan does not utilize a limitation or exclusion of benefits relating to the treatment of a preexisting condition, such plan may impose an affiliation period on such participant or beneficiary not to exceed 60 days (or in the case of a late participant or beneficiary described in subsection (c), 90 days) from the date on which the participant or bene-

ficiary would otherwise be eligible to receive benefits under the plan. An employee health benefit plan or a health plan issuer offering a group health plan may also use alternative methods to address adverse selection as approved by the applicable certifying authority (as defined in section 172(d)). During such an affiliation period, the plan may not be required to provide health care services or benefits and no premium shall be charged to the participant or beneficiary.

(e) PREEXISTING CONDITION.—For purposes of this section, the term ''preexisting condition'' means a condition, regardless of the cause of the condition, for which medical advice, diagnosis, care, or treatment was recommended or received within the 6-month period ending on the day before the effective date of the coverage (without regard to any waiting period).

(f) STATE FLEXIBILITY.—Nothing in this section shall be construed to preempt State laws that—

(1) require health plan issuers to impose a limitation or exclusion of benefits relating to the treatment of a preexisting condition for periods that are shorter than those provided for under this section; or

(2) allow individuals, participants, and beneficiaries to be considered to be in a period of pre-

vious qualifying coverage if such individual, participant, or beneficiary experiences a lapse in coverage that is greater than the 30-day period provided for under subsection (b)(3);

unless such laws are preempted by section 514 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1144).

SEC. 138. SPECIAL ENROLLMENT PERIODS.

In the case of a participant, beneficiary or family member who—

(1) through marriage, separation, divorce, death, birth or placement of a child for adoption, experiences a change in family composition affecting eligibility under a group health plan, individual health plan, or employee health benefit plan;

(2) experiences a change in employment status, as described in section 603(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1163(2)), that causes the loss of eligibility for coverage, other than COBRA continuation coverage under a group health plan, individual health plan, or employee health benefit plan; or

(3) experiences a loss of eligibility under a group health plan, individual health plan, or em-

ployee health benefit plan because of a change in the employment status of a family member;

each employee health benefit plan and each group health plan shall provide for a special enrollment period extending for a reasonable time after such event that would permit the participant to change the individual or family basis of coverage or to enroll in the plan if coverage would have been available to such individual, participant, or beneficiary but for failure to enroll during a previous enrollment period. Such a special enrollment period shall ensure that a child born or placed for adoption shall be deemed to be covered under the plan as of the date of such birth or placement for adoption if such child is enrolled within 30 days of the date of such birth or placement for adoption.

SEC. 139. DISCLOSURE OF INFORMATION.

(a) DISCLOSURE OF INFORMATION BY HEALTH PLAN ISSUERS.—

(1) IN GENERAL.—In connection with the offering of any group health plan to a small employer (as defined under applicable State law, or if not so defined, an employer with not more than 50 employees), a health plan issuer shall make a reasonable disclosure to such employer, as part of its solicitation and sales materials, of—

(A) the provisions of such group health plan concerning the health plan issuer's right to change premium rates and the factors that may affect changes in premium rates;

(B) the provisions of such group health plan relating to renewability of coverage;

(C) the provisions of such group health plan relating to any preexisting condition provision; and

(D) descriptive information about the benefits and premiums available under all group health plans for which the employer is qualified.

Information shall be provided to small employers under this paragraph in a manner determined to be understandable by the average small employer, and shall be sufficiently accurate and comprehensive to reasonably inform small employers, participants and beneficiaries of their rights and obligations under the group health plan.

(2) EXCEPTION.—With respect to the requirement of paragraph (1), any information that is proprietary and trade secret information under applicable law shall not be subject to the disclosure requirements of such paragraph.

(3) CONSTRUCTION.—Nothing in this subsection shall be construed to preempt State reporting and disclosure requirements to the extent that such requirements are not preempted under section 514 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1144).

(b) DISCLOSURE OF INFORMATION TO PARTICIPANTS AND BENEFICIARIES.—

(1) IN GENERAL.—Section 104(b)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1024(b)(1)) is amended in the matter following subparagraph (B)—

(A) by striking ''102(a)(1),'' and inserting ''102(a)(1) that is not a material reduction in covered services or benefits provided,''; and

(B) by adding at the end thereof the following new sentences: ''If there is a modification or change described in section 102(a)(1) that is a material reduction in covered services or benefits provided, a summary description of such modification or change shall be furnished to participants not later than 60 days after the date of the adoption of the modification or change. In the alternative, the plan sponsors may provide such description at regular inter-

vals of not more than 90 days. The Secretary shall issue regulations within 180 days after the date of enactment of the American Family Income and Economic Security Act of 1996, providing alternative mechanisms to delivery by mail through which employee health benefit plans may notify participants of material reductions in covered services or benefits.''

(2) PLAN DESCRIPTION AND SUMMARY.—Section 102(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1022(b)) is amended—

(A) by inserting ''including the office or title of the individual who is responsible for approving or denying claims for coverage of benefits'' after ''type of administration of the plan'';

(B) by inserting ''including the name of the organization responsible for financing claims'' after ''source of financing of the plan''; and

(C) by inserting ''including the office, contact, or title of the individual at the Department of Labor through which participants may seek assistance or information regarding their rights under this Act and subtitle C of title I

of the American Family Income and Economic Security Act of 1996 with respect to health benefits that are not offered through a group health plan.'' after ''benefits under the plan''.

Subpart B—Individual Market Rules

SEC. 141. INDIVIDUAL HEALTH PLAN PORTABILITY.

(a) LIMITATION ON REQUIREMENTS.—

(1) IN GENERAL.—With respect to an individual desiring to enroll in an individual health plan, if such individual is in a period of previous qualifying coverage (as defined in section 137(b)(3)(A)(i)) under one or more group health plans or employee health benefit plans that commenced 18 or more months prior to the date on which such individual desires to enroll in the individual plan, a health plan issuer described in paragraph (3) may not decline to offer coverage to such individual, or deny enrollment to such individual based on the health status, medical condition, claims experience, receipt of health care, medical history, evidence of insurability, or disability of the individual, except as described in subsections (b) and (c).

(2) HEALTH PROMOTION AND DISEASE PREVENTION.—Nothing in this subsection shall be construed to prevent a health plan issuer offering an in-

dividual health plan from establishing premium discounts or modifying otherwise applicable copayments or deductibles in return for adherence to programs of health promotion or disease prevention.

(3) HEALTH PLAN ISSUER.—A health plan issuer described in this paragraph is a health plan issuer that issues or renews individual health plans.

(4) PREMIUMS.—Nothing in this subsection shall be construed to affect the determination of a health plan issuer as to the amount of the premium payable under an individual health plan under applicable State law.

(b) ELIGIBILITY FOR OTHER GROUP COVERAGE.—The provisions of subsection (a) shall not apply to an individual who is eligible for coverage under a group health plan or an employee health benefit plan, or who has had coverage terminated under a group health plan or employee health benefit plan for failure to make required premium payments or contributions, or for fraud or misrepresentation of material fact, or who is otherwise eligible for continuation coverage as described in part 6 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1161 et seq.) or under an equivalent State program.

(c) APPLICATION OF CAPACITY LIMITS.—

(1) IN GENERAL.—Subject to paragraph (2), a health plan issuer offering coverage to individuals under an individual health plan may cease enrolling individuals under the plan if—

(A) the health plan issuer ceases to enroll any new individuals; and

(B) the health plan issuer can demonstrate to the applicable certifying authority (as defined in section 172(d)), if required, that its financial or provider capacity to serve previously covered individuals will be impaired if the health plan issuer is required to enroll additional individuals.

Such a health plan issuer shall be prohibited from offering coverage after a cessation in offering coverage under this paragraph for a 6-month period or until the health plan issuer can demonstrate to the applicable certifying authority (as defined in section 172(d)) that the health plan issuer has adequate capacity, whichever is later.

(2) FIRST-COME-FIRST-SERVED.—A health plan issuer offering coverage to individuals under an individual health plan is only eligible to exercise the limitations provided for in paragraph (1) if the health plan issuer provides for enrollment of individuals

under such plan on a first-come-first-served basis or other basis established by a State to ensure a fair opportunity to enroll in the plan and avoid risk selection.

(d) MARKET REQUIREMENTS.—

(1) IN GENERAL.—The provisions of subsection (a) shall not be construed to require that a health plan issuer offering group health plans to group purchasers offer individual health plans to individuals.

(2) CONVERSION POLICIES.—A health plan issuer offering group health plans to group purchasers under this Act shall not be deemed to be a health plan issuer offering an individual health plan solely because such health plan issuer offers a conversion policy.

(3) MARKETING OF PLANS.—Nothing in this section shall be construed to prevent a State from requiring health plan issuers offering coverage to individuals under an individual health plan to actively market such plan.

SEC. 142. GUARANTEED RENEWABILITY OF INDIVIDUAL HEALTH COVERAGE.

(a) IN GENERAL.—Subject to subsections (b) and (c), coverage for individuals under an individual health plan shall be renewed or continued in force by a health plan

issuer at the option of the individual, except that the requirement of this subsection shall not apply in the case of—

(1) the nonpayment of premiums or contributions by the individual in accordance with the terms of the individual health plan or where the health plan issuer has not received timely premium payments;

(2) fraud or misrepresentation of material fact on the part of the individual; or

(3) the termination of the individual health plan in accordance with subsection (b).

(b) TERMINATION OF INDIVIDUAL HEALTH PLANS.—

(1) PARTICULAR TYPE OF INDIVIDUAL HEALTH PLAN NOT OFFERED.—In any case in which a health plan issuer decides to discontinue offering a particular type of individual health plan to individuals, an individual health plan may be discontinued by the health plan issuer only if—

(A) the health plan issuer provides notice to each individual covered under the plan of such discontinuation at least 90 days prior to the date of the expiration of the plan;

(B) the health plan issuer offers to each individual covered under the plan the option to purchase any other individual health plan currently being offered by the health plan issuer to individuals; and

(C) in exercising the option to discontinue the individual health plan and in offering one or more replacement plans, the health plan issuer acts uniformly without regard to the health status or insurability of particular individuals.

(2) DISCONTINUANCE OF ALL INDIVIDUAL HEALTH PLANS.—In any case in which a health plan issuer elects to discontinue all individual health plans in a State, an individual health plan may be discontinued by the health plan issuer only if—

(A) the health plan issuer provides notice to the applicable certifying authority (as defined in section 172(d)) and to each individual covered under the plan of such discontinuation at least 180 days prior to the date of the discontinuation of the plan; and

(B) all individual health plans issued or delivered for issuance in the State are discontinued and coverage under such plans is not renewed.

(3) PROHIBITION ON MARKET REENTRY.—In the case of a discontinuation under paragraph (2), the health plan issuer may not provide for the issuance of any individual health plan in the State involved during the 5-year period beginning on the date of the discontinuation of the last plan not so renewed.

(c) TREATMENT OF NETWORK PLANS.—

(1) GEOGRAPHIC LIMITATIONS.—A health plan issuer which offers a network plan (as defined in paragraph (2)) may deny continued participation under the plan to individuals who neither live, reside, nor work in an area in which the individual health plan is offered, but only if such denial is applied uniformly, without regard to health status or the insurability of particular individuals.

(2) NETWORK PLAN.—As used in paragraph (1), the term ''network plan'' means an individual health plan that arranges for the financing and delivery of health care services to individuals covered under such health plan, in whole or in part, through arrangements with providers.

SEC. 143. STATE FLEXIBILITY IN INDIVIDUAL MARKET REFORMS.

(a) IN GENERAL.—With respect to any State law with respect to which the Governor of the State notifies the Secretary of Health and Human Services that such State law will achieve the goals of sections 141 and 142, and that is in effect on, or enacted after, the date of enactment of this Act (such as laws providing for guaranteed issue, open enrollment by one or more health plan issuers, high-risk pools, or mandatory conversion policies), such State law shall apply in lieu of the standards described in sections 141 and 142 unless the Secretary of Health and Human Services determines, after considering the criteria described in subsection (b)(1), in consultation with the Governor and Insurance Commissioner or chief insurance regulatory official of the State, that such State law does not achieve the goals of providing access to affordable health care coverage for those individuals described in sections 141 and 142.

(b) DETERMINATION.—

(1) IN GENERAL.—In making a determination under subsection (a), the Secretary of Health and Human Services shall only—

(A) evaluate whether the State law or program provides guaranteed access to affordable

coverage to individuals described in sections 141 and 142;

(B) evaluate whether the State law or program provides coverage for preexisting conditions (as defined in section 137(e)) that were covered under the individuals' previous group health plan or employee health benefit plan for individuals described in sections 141 and 142;

(C) evaluate whether the State law or program provides individuals described in sections 141 and 142 with a choice of health plans or a health plan providing comprehensive coverage; and

(D) evaluate whether the application of the standards described in sections 141 and 142 will have an adverse impact on the number of individuals in such State having access to affordable coverage.

(2) NOTICE OF INTENT.—If, within 6 months after the date of enactment of this Act, the Governor of a State notifies the Secretary of Health and Human Services that the State intends to enact a law, or modify an existing law, described in subsection (a), the Secretary of Health and Human Services may not make a determination under such

subsection until the expiration of the 12-month period beginning on the date on which such notification is made, or until January 1, 1997, whichever is later. With respect to a State that provides notice under this paragraph and that has a legislature that does not meet within the 12-month period beginning on the date of enactment of this Act, the Secretary shall not make a determination under subsection (a) prior to January 1, 1998.

(3) NOTICE TO STATE.—If the Secretary of Health and Human Services determines that a State law or program does not achieve the goals described in subsection (a), the Secretary of Health and Human Services shall provide the State with adequate notice and reasonable opportunity to modify such law or program to achieve such goals prior to making a final determination under subsection (a).

(c) ADOPTION OF NAIC MODEL.—If, not later than 9 months after the date of enactment of this Act—

(1) the National Association of Insurance Commissioners (hereafter referred to as the ''NAIC''), through a process which the Secretary of Health and Human Services determines has included consultation with representatives of the insurance industry and consumer groups, adopts a model standard or

standards for reform of the individual health insurance market; and

(2) the Secretary of Health and Human Services determines, within 30 days of the adoption of such NAIC standard or standards, that such standards comply with the goals of sections 141 and 142;

a State that elects to adopt such model standards or substantially adopt such model standards shall be deemed to have met the requirements of sections 141 and 142 and shall not be subject to a determination under subsection (a).

SEC. 144. DEFINITION.

(a) IN GENERAL.—As used in this part, the term ''individual health plan'' means any contract, policy, certificate or other arrangement offered to individuals by a health plan issuer that provides or pays for health benefits (such as provider and hospital benefits) and that is not a group health plan under section 131(6).

(b) ARRANGEMENTS NOT INCLUDED.—Such term does not include the following, or any combination thereof:

(1) Coverage only for accident, or disability income insurance, or any combination thereof.

(2) Medicare supplemental health insurance (as defined under section 1882(g)(1) of the Social Security Act).

(3) Coverage issued as a supplement to liability insurance.

(4) Liability insurance, including general liability insurance and automobile liability insurance.

(5) Workers' compensation or similar insurance.

(6) Automobile medical payment insurance.

(7) Coverage for a specified disease or illness.

(8) Hospital or fixed indemnity insurance.

(9) Short-term limited duration insurance.

(10) Credit-only, dental-only, or vision-only insurance.

(11) A health insurance policy providing benefits only for long-term care, nursing home care, home health care, community-based care, or any combination thereof.

Subpart C—COBRA Clarifications

SEC. 151. COBRA CLARIFICATIONS.

(a) PUBLIC HEALTH SERVICE ACT.—

(1) PERIOD OF COVERAGE.—Section 2202(2) of the Public Health Service Act (42 U.S.C. 300bb–2(2)) is amended—

(A) in subparagraph (A)—

(i) by transferring the sentence immediately preceding clause (iv) so as to ap-

pear immediately following such clause (iv); and

(ii) in the last sentence (as so transferred)—

(I) by inserting ‘‘, or a beneficiary-family member of the individual,’’ after ‘‘an individual’’; and

(II) by striking ‘‘at the time of a qualifying event described in section 2203(2)’’ and inserting ‘‘at any time during the initial 18-month period of continuing coverage under this title’’;

(B) in subparagraph (D)(i), by inserting before ‘‘, or’’ the following: ‘‘, except that the exclusion or limitation contained in this clause shall not be considered to apply to a plan under which a preexisting condition or exclusion does not apply to an individual otherwise eligible for continuation coverage under this section because of the provision of subtitle C of title I of the American Family Income and Economic Security Act of 1996’’; and

(C) in subparagraph (E), by striking ‘‘at the time of a qualifying event described in section 2203(2)’’ and inserting ‘‘at any time dur-

ing the initial 18-month period of continuing coverage under this title''.

(2) ELECTION.—Section 2205(1)(C) of the Public Health Service Act (42 U.S.C. 300bb–5(1)(C)) is amended—

(A) in clause (i), by striking ''or'' at the end thereof;

(B) in clause (ii), by striking the period and inserting '', or''; and

(C) by adding at the end thereof the following new clause:

''(iii) in the case of an individual described in the last sentence of section 2202(2)(A), or a beneficiary-family member of the individual, the date such individual is determined to have been disabled.''

(3) NOTICES.—Section 2206(3) of the Public Health Service Act (42 U.S.C. 300bb–6(3)) is amended by striking ''at the time of a qualifying event described in section 2203(2)'' and inserting ''at any time during the initial 18-month period of continuing coverage under this title''.

(4) BIRTH OR ADOPTION OF A CHILD.—Section 2208(3)(A) of the Public Health Service Act (42

U.S.C. 300bb–8(3)(A)) is amended by adding at the end thereof the following new flush sentence:

''Such term shall also include a child who is born to or placed for adoption with the covered employee during the period of continued coverage under this title.''

(b) EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—

(1) PERIOD OF COVERAGE.—Section 602(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1162(2)) is amended—

(A) in the last sentence of subparagraph (A)—

(i) by inserting '', or a beneficiary-family member of the individual,'' after ''an individual''; and

(ii) by striking ''at the time of a qualifying event described in section 603(2)'' and inserting ''at any time during the initial 18-month period of continuing coverage under this part'';

(B) in subparagraph (D)(i), by inserting before '', or'' the following: '', except that the exclusion or limitation contained in this clause shall not be considered to apply to a plan under

which a preexisting condition or exclusion does not apply to an individual otherwise eligible for continuation coverage under this section because of the provision of subtitle C of title I of the American Family Income and Economic Security Act of 1996''; and

(C) in subparagraph (E), by striking ''at the time of a qualifying event described in section 603(2)'' and inserting ''at any time during the initial 18-month period of continuing coverage under this part''.

(2) ELECTION.—Section 605(1)(C) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1165(1)(C)) is amended—

(A) in clause (i), by striking ''or'' at the end thereof;

(B) in clause (ii), by striking the period and inserting '', or''; and

(C) by adding at the end thereof the following new clause:

''(iii) in the case of an individual described in the last sentence of section 602(2)(A), or a beneficiary-family member of the individual, the date such individual is determined to have been disabled.''

(3) NOTICES.—Section 606(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1166(3)) is amended by striking ''at the time of a qualifying event described in section 603(2)'' and inserting ''at any time during the initial 18-month period of continuing coverage under this part''.

(4) BIRTH OR ADOPTION OF A CHILD.—Section 607(3)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1167(3)) is amended by adding at the end thereof the following new flush sentence:

''Such term shall also include a child who is born to or placed for adoption with the covered employee during the period of continued coverage under this part.''

(c) INTERNAL REVENUE CODE OF 1986.—

(1) PERIOD OF COVERAGE.—Section 4980B(f)(2)(B) of the Internal Revenue Code of 1986 is amended—

(A) in the last sentence of clause (i) by striking ''at the time of a qualifying event described in paragraph (3)(B)'' and inserting ''at any time during the initial 18-month period of continuing coverage under this section'';

(B) in clause (iv)(I), by inserting before ", or" the following: ", except that the exclusion or limitation contained in this subclause shall not be considered to apply to a plan under which a preexisting condition or exclusion does not apply to an individual otherwise eligible for continuation coverage under this subsection because of the provision of subtitle C of title I of the American Family Income and Economic Security Act of 1996"; and

(C) in clause (v), by striking "at the time of a qualifying event described in paragraph (3)(B)" and inserting "at any time during the initial 18-month period of continuing coverage under this section".

(2) ELECTION.—Section 4980B(f)(5)(A)(iii) of the Internal Revenue Code of 1986 is amended—

(A) in subclause (I), by striking "or" at the end thereof;

(B) in subclause (II), by striking the period and inserting ", or"; and

(C) by adding at the end thereof the following new subclause:

"(III) in the case of an qualified beneficiary described in the last sen-

tence of paragraph (2)(B)(i), the date such individual is determined to have been disabled.''

(3) NOTICES.—Section 4980B(f)(6)(C) of the Internal Revenue Code of 1986 is amended by striking ''at the time of a qualifying event described in paragraph (3)(B)'' and inserting ''at any time during the initial 18-month period of continuing coverage under this section''.

(4) BIRTH OR ADOPTION OF A CHILD.—Section 4980B(g)(1)(A) of the Internal Revenue Code of 1986 is amended by adding at the end thereof the following new flush sentence:

''Such term shall also include a child who is born to or placed for adoption with the covered employee during the period of continued coverage under this section.''

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to qualifying events occurring on or after the date of the enactment of this Act for plan years beginning after December 31, 1996.

(e) NOTIFICATION OF CHANGES.—Not later than 60 days prior to the date on which this section becomes effective, each group health plan (covered under title XXII of the Public Health Service Act, part 6 of subtitle B of title

I of the Employee Retirement Income Security Act of 1974, and section 4980B(f) of the Internal Revenue Code of 1986) shall notify each qualified beneficiary who has elected continuation coverage under such title, part or section of the amendments made by this section.

Subpart D—Private Health Plan Purchasing Cooperatives

SEC. 161. PRIVATE HEALTH PLAN PURCHASING COOPERATIVES.

(a) DEFINITION.—As used in this subtitle, the term ''health plan purchasing cooperative'' means a group of individuals or employers that, on a voluntary basis and in accordance with this section, form a cooperative for the purpose of purchasing individual health plans or group health plans offered by health plan issuers. A health plan issuer, agent, broker or any other individual or entity engaged in the sale of insurance may not underwrite a cooperative.

(b) CERTIFICATION.—

(1) IN GENERAL.—If a group described in subsection (a) desires to form a health plan purchasing cooperative in accordance with this section and such group appropriately notifies the State and the Secretary of such desire, the State, upon a determination that such group meets the requirements of this

section, shall certify the group as a health plan purchasing cooperative. The State shall make a determination of whether such group meets the requirements of this section in a timely fashion. Each such cooperative shall also be registered with the Secretary.

(2) STATE REFUSAL TO CERTIFY.—If a State fails to implement a program for certifying health plan purchasing cooperatives in accordance with the standards under this subtitle, the Secretary shall certify and oversee the operations of such cooperatives in such State.

(3) INTERSTATE COOPERATIVES.—For purposes of this section, a health plan purchasing cooperative operating in more than one State shall be certified by the State in which the cooperative is domiciled. States may enter into cooperative agreements for the purpose of certifying and overseeing the operation of such cooperatives. For purposes of this subsection, a cooperative shall be considered to be domiciled in the State in which most of the members of the cooperative reside.

(c) BOARD OF DIRECTORS.—

(1) IN GENERAL.—Each health plan purchasing cooperative shall be governed by a Board of Direc-

tors that shall be responsible for ensuring the performance of the duties of the cooperative under this section. The Board shall be composed of a broad cross-section of representatives of employers, employees, and individuals participating in the cooperative. A health plan issuer, agent, broker, or any other individual or entity engaged in the sale of individual health plans or group health plans may not hold or control any right to vote with respect to a cooperative.

(2) LIMITATION ON COMPENSATION.—A health plan purchasing cooperative may not provide compensation to members of the Board of Directors. The cooperative may provide reimbursements to such members for the reasonable and necessary expenses incurred by the members in the performance of their duties as members of the Board.

(3) CONFLICT OF INTEREST.—No member of the Board of Directors (or family members of such members) nor any management personnel of the cooperative may be employed by, be a consultant for, be a member of the board of directors of, be affiliated with an agent of, or otherwise be a representative of any health plan issuer, health care provider, or agent or broker. Nothing in the preceding sen-

tence shall limit a member of the Board from purchasing coverage offered through the cooperative.

(d) MEMBERSHIP AND MARKETING AREA.—

(1) MEMBERSHIP.—A health plan purchasing cooperative may establish limits on the maximum size of employers who may become members of the cooperative, and may determine whether to permit individuals to become members. Upon the establishment of such membership requirements, the cooperative shall, except as provided in paragraph (2), accept all employers (or individuals) residing within the area served by the cooperative who meet such requirements as members on a first-come, first-served basis, or on another basis established by the State to ensure equitable access to the cooperative.

(2) MARKETING AREA.—A State may establish rules regarding the geographic area that must be served by a health plan purchasing cooperative. With respect to a State that has not established such rules, a health plan purchasing cooperative operating in the State shall define the boundaries of the area to be served by the cooperative, except that such boundaries may not be established on the basis of health status or insurability of the populations that reside in the area.

(e) DUTIES AND RESPONSIBILITIES.—

(1) IN GENERAL.—A health plan purchasing cooperative shall—

(A) enter into agreements with multiple, unaffiliated health plan issuers, except that the requirement of this subparagraph shall not apply in regions (such as remote or frontier areas) in which compliance with such requirement is not possible;

(B) enter into agreements with employers and individuals who become members of the cooperative;

(C) participate in any program of risk-adjustment or reinsurance, or any similar program, that is established by the State;

(D) prepare and disseminate comparative health plan materials (including information about cost, quality, benefits, and other information concerning group health plans and individual health plans offered through the cooperative);

(E) actively market to all eligible employers and individuals residing within the service area; and

(F) act as an ombudsman for group health plan or individual health plan enrollees.

(2) PERMISSIBLE ACTIVITIES.—A health plan purchasing cooperative may perform such other functions as necessary to further the purposes of this subtitle, including—

(A) collecting and distributing premiums and performing other administrative functions;

(B) collecting and analyzing surveys of enrollee satisfaction;

(C) charging membership fee to enrollees (such fees may not be based on health status) and charging participation fees to health plan issuers;

(D) cooperating with (or accepting as members) employers who provide health benefits directly to participants and beneficiaries only for the purpose of negotiating with providers; and

(E) negotiating with health care providers and health plan issuers.

(f) LIMITATIONS ON COOPERATIVE ACTIVITIES.—A health plan purchasing cooperative shall not—

(1) perform any activity relating to the licensing of health plan issuers;

(2) assume financial risk directly or indirectly on behalf of members of a health plan purchasing cooperative relating to any group health plan or individual health plan;

(3) establish eligibility, continuation of eligibility, enrollment, or premium contribution requirements for participants, beneficiaries, or individuals based on health status, medical condition, claims experience, receipt of health care, medical history, evidence of insurability, or disability;

(4) operate on a for-profit or other basis where the legal structure of the cooperative permits profits to be made and not returned to the members of the cooperative, except that a for-profit health plan purchasing cooperative may be formed by a nonprofit organization—

(A) in which membership in such organization is not based on health status, medical condition, claims experience, receipt of health care, medical history, evidence of insurability, or disability; and

(B) that accepts as members all employers or individuals on a first-come, first-served basis, subject to any established limit on the maxi-

mum size of an employer that may become a member; or

(5) perform any other activities that conflict or are inconsistent with the performance of its duties under this subtitle.

(g) LIMITED PREEMPTION OF CERTAIN STATE LAWS.—

(1) IN GENERAL.—With respect to a health plan purchasing cooperative that meets the requirements of this section, State fictitious group laws shall be preempted.

(2) HEALTH PLAN ISSUERS.—

(A) RATING.—With respect to a health plan issuer offering a group health plan or individual health plan through a health plan purchasing cooperative that meets the requirements of this section, State premium rating requirement laws, except to the extent provided under subparagraph (B), shall be preempted unless such laws permit premium rates negotiated by the cooperative to be less than rates that would otherwise be permitted under State law, if such rating differential is not based on differences in health status or demographic factors.

(B) EXCEPTION.—State laws referred to in subparagraph (A) shall not be preempted if such laws—

(i) prohibit the variance of premium rates among employers, plan sponsors, or individuals that are members of a health plan purchasing cooperative in excess of the amount of such variations that would be permitted under such State rating laws among employers, plan sponsors, and individuals that are not members of the cooperative; and

(ii) prohibit a percentage increase in premium rates for a new rating period that is in excess of that which would be permitted under State rating laws.

(C) BENEFITS.—Except as provided in subparagraph (D), a health plan issuer offering a group health plan or individual health plan through a health plan purchasing cooperative shall comply with all State mandated benefit laws that require the offering of any services, category or care, or services of any class or type of provider.

(D) EXCEPTION.—In those States that have enacted laws authorizing the issuance of alternative benefit plans to small employers, health plan issuers may offer such alternative benefit plans through a health plan purchasing cooperative that meets the requirements of this section.

(h) RULES OF CONSTRUCTION.—Nothing in this section shall be construed to—

(1) require that a State organize, operate, or otherwise create health plan purchasing cooperatives;

(2) otherwise require the establishment of health plan purchasing cooperatives;

(3) require individuals, plan sponsors, or employers to purchase group health plans or individual health plans through a health plan purchasing cooperative;

(4) require that a health plan purchasing cooperative be the only type of purchasing arrangement permitted to operate in a State;

(5) confer authority upon a State that the State would not otherwise have to regulate health plan issuers or employee health benefits plans; or

(6) confer authority upon a State (or the Federal Government) that the State (or Federal Govern-

ment) would not otherwise have to regulate group purchasing arrangements, coalitions, or other similar entities that do not desire to become a health plan purchasing cooperative in accordance with this section.

(i) APPLICATION OF ERISA.—For purposes of enforcement only, the requirements of parts 4 and 5 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1101) shall apply to a health plan purchasing cooperative as if such plan were an employee welfare benefit plan.

PART II—APPLICATION AND ENFORCEMENT OF STANDARDS

SEC. 171. APPLICABILITY.

(a) CONSTRUCTION.—

(1) ENFORCEMENT.—

(A) IN GENERAL.—A requirement or standard imposed under this subtitle on a group health plan or individual health plan offered by a health plan issuer shall be deemed to be a requirement or standard imposed on the health plan issuer. Such requirements or standards shall be enforced by the State insurance commissioner for the State involved or the official or officials designated by the State to en-

force the requirements of this subtitle. In the case of a group health plan offered by a health plan issuer in connection with an employee health benefit plan, the requirements or standards imposed under this subtitle shall be enforced with respect to the health plan issuer by the State insurance commissioner for the State involved or the official or officials designated by the State to enforce the requirements of this subtitle.

(B) LIMITATION.—Except as provided in subsection (c), the Secretary shall not enforce the requirements or standards of this subtitle as they relate to health plan issuers, group health plans, or individual health plans. In no case shall a State enforce the requirements or standards of this subtitle as they relate to employee health benefit plans.

(2) PREEMPTION OF STATE LAW.—Nothing in this subtitle shall be construed to prevent a State from establishing, implementing, or continuing in effect standards and requirements—

(A) not prescribed in this subtitle; or

(B) related to the issuance, renewal, or portability of health insurance or the establish-

ment or operation of group purchasing arrangements, that are consistent with, and are not in direct conflict with, this subtitle and provide greater protection or benefit to participants, beneficiaries or individuals.

(b) RULE OF CONSTRUCTION.—Nothing in this subtitle shall be construed to affect or modify the provisions of section 514 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1144).

(c) CONTINUATION.—Nothing in this subtitle shall be construed as requiring a group health plan or an employee health benefit plan to provide benefits to a particular participant or beneficiary in excess of those provided under the terms of such plan.

SEC. 172. ENFORCEMENT OF STANDARDS.

(a) HEALTH PLAN ISSUERS.—Each State shall require that each group health plan and individual health plan issued, sold, renewed, offered for sale or operated in such State by a health plan issuer meet the standards established under this subtitle pursuant to an enforcement plan filed by the State with the Secretary. A State shall submit such information as required by the Secretary demonstrating effective implementation of the State enforcement plan.

(b) EMPLOYEE HEALTH BENEFIT PLANS.—With respect to employee health benefit plans, the Secretary shall enforce the reform standards established under this subtitle in the same manner as provided for under sections 502, 504, 506, and 510 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132, 1134, 1136, and 1140). The civil penalties contained in paragraphs (1) and (2) of section 502(c) of such Act (29 U.S.C. 1132(c)(1) and (2)) shall apply to any information required by the Secretary to be disclosed and reported under this section.

(c) FAILURE TO IMPLEMENT PLAN.—In the case of the failure of a State to substantially enforce the standards and requirements set forth in this subtitle with respect to group health plans and individual health plans as provided for under the State enforcement plan filed under subsection (a), the Secretary, in consultation with the Secretary of Health and Human Services, shall implement an enforcement plan meeting the standards of this subtitle in such State. In the case of a State that fails to substantially enforce the standards and requirements set forth in this subtitle, each health plan issuer operating in such State shall be subject to civil enforcement as provided for under sections 502, 504, 506, and 510 of the Employee Retirement Income Security Act of 1974 (29

U.S.C. 1132, 1134, 1136, and 1140). The civil penalties contained in paragraphs (1) and (2) of section 502(c) of such Act (29 U.S.C. 1132(c)(1) and (2)) shall apply to any information required by the Secretary to be disclosed and reported under this section.

(d) APPLICABLE CERTIFYING AUTHORITY.—As used in this part, the term ''applicable certifying authority'' means, with respect to—

(1) health plan issuers, the State insurance commissioner or official or officials designated by the State to enforce the requirements of this subtitle for the State involved; and

(2) an employee health benefit plan, the Secretary.

(e) REGULATIONS.—The Secretary may promulgate such regulations as may be necessary or appropriate to carry out this subtitle.

(f) TECHNICAL AMENDMENT.—Section 508 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1138) is amended by inserting ''and under subtitle C of title I of the American Family Income and Economic Security Act of 1996'' before the period.

PART III—MISCELLANEOUS PROVISIONS

SEC. 181. HMOS ALLOWED TO OFFER PLANS WITH DEDUCTIBLES TO INDIVIDUALS WITH MEDICAL SAVINGS ACCOUNTS.

(a) IN GENERAL.—Section 1301(b) of the Public Health Service Act (42 U.S.C. 300e(b)) is amended by adding at the end the following new paragraph:

''(6)(A) If a member certifies that a medical savings account has been established for the benefit of such member, a health maintenance organization may, at the request of such member reduce the basic health services payment otherwise determined under paragraph (1) by requiring the payment of a deductible by the member for basic health services.

''(B) For purposes of this paragraph, the term 'medical savings account' means an account which, by its terms, allows the deposit of funds and the use of such funds and income derived from the investment of such funds for the payment of the deductible described in subparagraph (A).''

(b) MEDICAL SAVINGS ACCOUNTS.—It is the sense of the Committee on Labor and Human Resources of the Senate that the establishment of medical savings accounts, including those defined in section 1301(b)(6)(B) of the Public Health Service Act (42 U.S.C. 300e(b)(6)(B)), should be encouraged as part of any health insurance re-

form legislation passed by the Senate through the use of tax incentives relating to contributions to, the income growth of, and the qualified use of, such accounts.

(c) SENSE OF THE SENATE.—It is the sense of the Senate that the Congress should take measures to further the purposes of this Act, including any necessary changes to the Internal Revenue Code of 1986 to encourage groups and individuals to obtain health coverage, and to promote access, equity, portability, affordability, and security of health benefits.

SEC. 182. HEALTH COVERAGE AVAILABILITY STUDY.

(a) IN GENERAL.—The Secretary of Health and Human Services, in consultation with the Secretary, representatives of State officials, consumers, and other representatives of individuals and entities that have expertise in health insurance and employee benefits, shall conduct a two-part study, and prepare and submit reports, in accordance with this section.

(b) EVALUATION OF AVAILABILITY.—Not later than January 1, 1997, the Secretary of Health and Human Services shall prepare and submit to the appropriate committees of Congress a report, concerning—

(1) an evaluation, based on the experience of States, expert opinions, and such additional data as may be available, of the various mechanisms used to

ensure the availability of reasonably priced health coverage to employers purchasing group coverage and to individuals purchasing coverage on a non-group basis; and

(2) whether standards that limit the variation in premiums will further the purposes of this subtitle.

(c) EVALUATION OF EFFECTIVENESS.—Not later than January 1, 1998, the Secretary of Health and Human Services shall prepare and submit to the appropriate committees of Congress a report, concerning the effectiveness of the provisions of this subtitle and the various State laws, in ensuring the availability of reasonably priced health coverage to employers purchasing group coverage and individuals purchasing coverage on a non-group basis.

SEC. 183. SENSE OF THE COMMITTEE CONCERNING MEDICARE.

(a) FINDINGS.—The Committee on Labor and Human Resources of the Senate finds that the Public Trustees of Medicare concluded in their 1995 Annual Report that—

(1) the medicare program is clearly unsustainable in its present form;

(2) ''the Hospital Insurance Trust Fund, which pays inpatient hospital expenses, will be able to pay benefits for only about 7 years and is severely out of financial balance in the long range''; and

(3) the Public Trustees ''strongly recommend that the crisis presented by the financial condition of the Medicare trust fund be urgently addressed on a comprehensive basis, including a review of the programs's financing methods, benefit provisions, and delivery mechanisms''.

(b) SENSE OF THE COMMITTEE.—It is the Sense of the Committee on Labor and Human Resources of the Senate that the Senate should take measures necessary to reform the Medicare program, to provide increased choice for seniors, and to respond to the findings of the Public Trustees by protecting the short-term solvency and long-term sustainability of the Medicare program.

SEC. 184. EFFECTIVE DATE.

Except as otherwise provided for in this subtitle, the provisions of this subtitle shall apply as follows:

(1) With respect to group health plans and individual health plans, such provisions shall apply to plans offered, sold, issued, renewed, in effect, or operated on or after January 1, 1996.

(2) With respect to employee health benefit plans, on the first day of the first plan year beginning on or after January 1, 1996.

SEC. 185. SEVERABILITY.

If any provision of this subtitle or the application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this subtitle and the application of the provisions of such to any person or circumstance shall not be affected thereby.

Subtitle D—Employee Security

SEC. 191. ALLOWANCE OF CREDIT FOR EMPLOYER EXPENSES FOR CERTAIN ON-SITE DAY-CARE FACILITIES.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits) is amended by adding at the end thereof the following new section:

"SEC. 45C. EMPLOYER ON-SITE DAY-CARE FACILITY CREDIT.

"(a) IN GENERAL.—For purposes of section 38, the employer on-site day-care facility credit determined under this section for the taxable year is an amount equal to 50 percent of the qualified investment in property placed in service during such taxable year as part of a qualified day-care facility.

''(b) LIMITATION.—The credit allowable under subsection (a) with respect to any qualified day-care facility shall not exceed $150,000.

''(c) DEFINITIONS.—For purposes of this section—

''(1) QUALIFIED INVESTMENT.—The term 'qualified investment' means the amount paid or incurred to acquire, construct, rehabilitate, or expand property—

''(A) which is to be used as part of a qualified day-care facility, and

''(B) with respect to which a deduction for depreciation (or amortization in lieu of depreciation) is allowable.

Such term includes only amounts properly chargeable to capital account.

''(2) QUALIFIED DAY-CARE FACILITY.—

''(A) IN GENERAL.—The term 'qualified day-care facility' means a facility—

''(i) operated by an employer to provide dependent care assistance for enrollees, at least 30 percent of whom are dependents of employees of employers to which a credit under subsection (a) with respect to the facility is allowable,

''(ii) the principal use of which is to provide dependent care assistance described in clause (i),

''(iii) located on the premises of such employer,

''(iv) which meets the requirements of all applicable laws and regulations of the State or local government in which it is located, including, but not limited to, the licensing of the facility as a day-care facility, and

''(v) the use of which (or the eligibility to use) does not discriminate in favor of employees who are highly compensated employees (within the meaning of section 414(q)).

''(B) MULTIPLE EMPLOYERS.—With respect to a facility jointly operated by more than 1 employer, the term 'qualified day-care facility' shall include any facility located on the premises of 1 employer and within a reasonable distance from the premises of the other employers.

''(d) RECAPTURE OF CREDIT.—

''(1) IN GENERAL.—If, as of the close of any taxable year, there is a recapture event with respect

to any qualified day-care facility, then the tax of the taxpayer under this chapter for such taxable year shall be increased by an amount equal to the product of—

''(A) the applicable recapture percentage, and

''(B) the aggregate decrease in the credits allowed under section 38 for all prior taxable years which would have resulted if the qualified on-site day-care expenses of the taxpayer with respect to such facility had been zero.

''(2) APPLICABLE RECAPTURE PERCENTAGE.—

''(A) IN GENERAL.—For purposes of this subsection, the applicable recapture percentage shall be determined from the following table:

"If the recapture event occurs in:	**The applicable recapture percentage is:**
Years 1–3	100
Year 4	85
Year 5	70
Year 6	55
Year 7	40
Year 8	25
Years 9 and 10	10
Years 11 and thereafter	0.

''(B) YEARS.—For purposes of subparagraph (A), year 1 shall begin on the first day of the taxable year in which the qualified day-care facility is placed in service by the taxpayer.

''(3) RECAPTURE EVENT DEFINED.—For purposes of this subsection, the term 'recapture event' means—

''(A) CESSATION OF OPERATION.—The cessation of the operation of the facility as a qualified day-care facility.

''(B) CHANGE IN OWNERSHIP.—

''(i) IN GENERAL.—Except as provided in clause (ii), the disposition of a taxpayer's interest in a qualified day-care facility with respect to which the credit described in subsection (a) was allowable.

''(ii) AGREEMENT TO ASSUME RECAPTURE LIABILITY.—Clause (i) shall not apply if the person acquiring such interest in the facility agrees in writing to assume the recapture liability of the person disposing of such interest in effect immediately before such disposition. In the event of such an assumption, the person acquiring the interest in the facility shall be treated as the taxpayer for purposes of assessing any recapture liability (computed as if there had been no change in ownership).

''(4) SPECIAL RULES.—

''(A) TAX BENEFIT RULE.—The tax for the taxable year shall be increased under paragraph (1) only with respect to credits allowed by reason of this section which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carryforwards and carrybacks under section 39 shall be appropriately adjusted.

''(B) NO CREDITS AGAINST TAX.—Any increase in tax under this subsection shall not be treated as a tax imposed by this chapter for purposes of determining the amount of any credit under subpart A, B, or D of this part.

''(C) NO RECAPTURE BY REASON OF CASUALTY LOSS.—The increase in tax under this subsection shall not apply to a cessation of operation of the facility as a qualified day-care facility by reason of a casualty loss to the extent such loss is restored by reconstruction or replacement within a reasonable period established by the Secretary.

''(e) SPECIAL ALLOCATION RULES.—For purposes of this section—

''(1) ALLOCATION IN CASE OF MULTIPLE EMPLOYERS.—In the case of multiple employers jointly

operating a qualified day-care facility, the credit allowable by this section to each such employer shall be its proportionate share of the qualified on-site day-care expenses giving rise to the credit.

''(2) PASS-THRU IN THE CASE OF ESTATES AND TRUSTS.—Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

''(3) ALLOCATION IN THE CASE OF PARTNERSHIPS.—In the case of partnerships, the credit shall be allocated among partners under regulations prescribed by the Secretary.

''(f) NO DOUBLE BENEFIT.—

''(1) REDUCTION IN BASIS.—For purposes of this subtitle—

''(A) IN GENERAL.—If a credit is determined under this section with respect to any property, the basis of such property shall be reduced by the amount of the credit so determined.

''(B) CERTAIN DISPOSITIONS.—If during any taxable year there is a recapture amount determined with respect to any property the basis of which was reduced under paragraph (1), the basis of such property (immediately be-

fore the event resulting in such recapture) shall be increased by an amount equal to such recapture amount. For purposes of the preceding sentence, the term 'recapture amount' means any increase in tax (or adjustment in carrybacks or carryovers) determined under subsection (d).

''(2) OTHER DEDUCTIONS AND CREDITS.—No deduction or credit shall be allowed under any other provision of this chapter with respect to the amount of the credit determined under this section.''

(b) CONFORMING AMENDMENTS.—

(1) Section 38(b) is amended—

(A) by striking ''plus'' at the end of paragraph (10),

(B) by striking the period at the end of paragraph (11), and inserting a comma and ''plus'', and

(C) by adding at the end the following new paragraph:

''(12) the employer on-site day-care facility credit determined under section 45A.''

(2) The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by adding at the end the following new item:

''Sec. 45C. Employer on-site day-care facility credit.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

SEC. 192. EXCLUSION FOR GROUP LEGAL SERVICES MADE PERMANENT.

(a) GENERAL RULE.—Section 120 of the Internal Revenue Code of 1986 (relating to amounts received under qualified group legal services plans) is amended by striking subsection (e) and by redesignating subsection (f) as subsection (e).

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to taxable years beginning after December 31, 1995.

SEC. 193. ONE-TIME EXCLUSION OF GAIN FROM SALE OF PRINCIPAL RESIDENCE IF INDIVIDUAL OR SPOUSE IS TERMINALLY ILL.

(a) IN GENERAL.—Paragraph (1) of section 121(a) (relating to one-time exclusion of gain from sale of principal residence by individual who has attained age 55) is amended to read as follows:

"(1)(A) the taxpayer has attained the age of 55 years before the date of such sale or exchange, or

"(B) the individual, or the individual's spouse, is terminally ill on the date of the sale or exchange, and".

(b) DEFINITION OF TERMINALLY ILL.—Subsection (d) of section 121 is amended by adding at the end the following new paragraph:

''(10) TERMINALLY ILL.—

''(A) IN GENERAL.—Subject to subparagraph (B), an individual shall be treated as terminally ill for purposes of subsection (a) if such individual has an illness or physical condition which can reasonably be expected to result in death in 24 months or less.

''(B) PROOF REQUIREMENTS.—No individual shall be treated as terminally ill for purposes of subsection (a) unless proof that the individual is terminally ill is furnished to the Secretary at such time and in such manner as the Secretary may prescribe.''

(c) CLERICAL AND CONFORMING AMENDMENTS.—

(1) The heading of section 121 is amended to read as follows:

"SEC. 121. ONE-TIME EXCLUSION OF GAIN FROM SALE OF PRINCIPAL RESIDENCE BY INDIVIDUAL WHO HAS ATTAINED AGE 55 OR IS TERMINALLY ILL."

(2) The table of sections for part III of subchapter B of chapter 1 is amended by amending the item relating to section 121 to read as follows:

"Sec. 121. One-time exclusion of gain from sale of principal residence by individual who has attained age 55 or is terminally ill."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to sales and exchanges occurring after the date of the enactment of this Act.

TITLE II—INCENTIVES FOR LIFELONG LEARNING

SEC. 201. CREDIT FOR EMPLOYEE TRAINING.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits), as amended by section 191, is amended by adding at the end the following new section:

"SEC. 45D. EMPLOYEE TRAINING CREDIT.

"(a) IN GENERAL.—For purposes of section 38, the amount of the employee training credit determined under this section for any taxable year shall be an amount equal to 50 percent of the qualified training expenses of the taxpayer for such taxable year.

''(b) QUALIFIED TRAINING EXPENSES.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified training expenses' means the aggregate amount of expenses paid or incurred by the taxpayer during the taxable year in connection with the training of employees under any approved training program.

''(2) ONLY FIRST $2,500 OF QUALIFIED TRAINING EXPENSES TAKEN INTO ACCOUNT.—The amount of the qualified training expenses which may be taken into account with respect to any employee shall not exceed $2,500.

''(3) APPROVED TRAINING PROGRAMS.—The term 'approved training program' means—

''(A) any apprenticeship program registered with or approved by any Federal or State agency or department,

''(B) any employer-designed or employer-sponsored program which meets such minimum requirements with respect to supervised on-the-job experience and classroom instruction as the Secretary of Labor shall prescribe by regulations,

''(C) any cooperative education (within the meaning given to such term by section 521(8)

of the Carl D. Perkins Vocational Education Act),

''(D) any training program designated by the Secretary of Labor which is carried out under the supervision of an institution of higher education (within the meaning given to such term by section 1201(a) of the Higher Education Act of 1965), or

''(E) any other program for improving job skills directly related to employment which the Secretary of Labor may approve under regulations prescribed by such Secretary.

''(c) SPECIAL RULES.—For purposes of this section—

''(1) AGGREGATION OF QUALIFIED TRAINING EXPENSES.—

''(A) CONTROLLED GROUP OF CORPORATIONS.—

''(i) IN GENERAL.—In determining the amount of the credit under this section—

''(I) all members of the same controlled group of corporations shall be treated as a single taxpayer, and

"(II) the credit (if any) allowable by this section to each such member shall be its proportionate share of the qualified training expenses giving rise to the credit.

"(ii) CONTROLLED GROUP OF CORPORATIONS DEFINED.—The term 'controlled group of corporations' has the same meaning given to such term by section 1563(a), except that—

"(I) 'more than 50 percent' shall be substituted for 'at least 80 percent' each place it appears in section 1563(a)(1), and

"(II) the determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of section 1563.

"(B) COMMON CONTROL.—Under regulations prescribed by the Secretary, in determining the amount of the credit under this section—

"(i) all trades or businesses (whether or not incorporated) which are under common control shall be treated as a single taxpayer, and

''(ii) the credit (if any) allowable by this section to each such trade or business shall be its proportionate share of the qualified training expenses giving rise to the credit.

The regulations prescribed under this subparagraph shall be based on principles similar to the principles which apply in the case of subparagraph (A).

''(2) ALLOCATIONS.—

''(A) PASS-THRU IN THE CASE OF ESTATES AND TRUSTS.—Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

''(B) ALLOCATION IN THE CASE OF PARTNERSHIPS.—In the case of partnerships, the credit shall be allocated among partners under regulations prescribed by the Secretary.

''(d) ADDITIONAL BENEFIT.—The credit allowable under this section with respect to qualified training expenses of the taxpayer shall be in addition to any deduction or credit allowed the taxpayer under any other provision of this chapter with respect to such expenses.''

(b) EMPLOYEE TRAINING CREDIT TREATED AS OTHER BUSINESS CREDITS.—Section 38(b) of the Inter-

nal Revenue Code of 1986 (defining current year business credit) is amended by striking ''plus'' at the end of paragraph (11), by striking the period at the end of paragraph (12) and inserting '', plus'', and by adding at the end the following new paragraph:

''(13) the employee training credit determined under section 45C(a).''

(c) CLERICAL AMENDMENT.—The table of sections for subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

''Sec. 45D. Employee training credit.''

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

SEC. 202. PERMANENT EXTENSION OF EDUCATIONAL ASSISTANCE EXCLUSION.

(a) IN GENERAL.—Section 127 (relating to exclusion for educational assistance programs) is amended by striking subsection (d) and by redesignating subsection (e) as subsection (d).

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1994.

SEC. 203. DEDUCTION FOR HIGHER EDUCATION EXPENSES.

(a) DEDUCTION ALLOWED.—Part VII of subchapter B of chapter 1 (relating to additional itemized deductions for individuals) is amended by redesignating section 220 as section 221 and by inserting after section 219 the following new section:

"SEC. 220. HIGHER EDUCATION TUITION AND FEES; INTEREST ON STUDENT LOANS.

"(a) ALLOWANCE OF DEDUCTION.—In the case of an individual, there shall be allowed as a deduction an amount equal to the sum of—

"(1) the qualified higher education expenses, plus

"(2) interest on qualified higher education loans, paid by the taxpayer during the taxable year.

"(b) QUALIFIED HIGHER EDUCATION EXPENSES.—For purposes of this section—

"(1) QUALIFIED HIGHER EDUCATION EXPENSES.—

"(A) IN GENERAL.—The term 'qualified higher education expenses' means tuition and fees required for the enrollment or attendance of—

"(i) the taxpayer,

"(ii) the taxpayer's spouse, or

''(iii) any dependent of the taxpayer with respect to whom the taxpayer is allowed a deduction under section 151, as an eligible student at an institution of higher education.

''(B) EXCEPTION FOR EDUCATION INVOLVING SPORTS, ETC.—Such term does not include expenses with respect to any course or other education involving sports, games, or hobbies unless such expenses—

''(I) are part of a degree program, or

''(II) are deductible under this chapter without regard to this section.

''(C) EXCEPTION FOR NONACADEMIC FEES.—Such term does not include any student activity fees, athletic fees, insurance expenses, or other expenses unrelated to a student's academic course of instruction.

''(D) ELIGIBLE STUDENT.—For purposes of subparagraph (A), the term 'eligible student' means a student who meets the requirements of section 484(a)(1) of the Higher Education Act of 1965 (20 U.S.C. 1091(a)(1)).

''(2) DOLLAR LIMITATION.—

"(A) IN GENERAL.—The amount taken into account under paragraph (1) for any taxable year shall not exceed $10,000.

"(B) PHASE-IN.—In the case of taxable years beginning in 1996, 1997, 1998, and 1999, the following amounts shall be substituted for '$10,000' in subparagraph (A):

"For taxable years beginning in:	The substitute amount is:
1996	$2,000
1997	4,000
1998	6,000
1999	8,000.

"(3) LIMITATION BASED ON MODIFIED ADJUSTED GROSS INCOME.—

"(A) IN GENERAL.—If the modified adjusted gross income of the taxpayer for the taxable year exceeds $70,000 ($100,000 in the case of a joint return), the amount which would (but for this paragraph) be taken into account under paragraph (1) shall be reduced (but not below zero) by the amount which bears the same ratio to the amount which would be taken into account as such excess bears to $20,000.

"(B) INFLATION ADJUSTMENT.—In the case of any taxable year beginning in a calendar year after 1996, the $70,000 and $100,000

amounts contained in subparagraph (A) shall be increased by an amount equal to—

"(i) such dollar amount, multiplied by

"(ii) the cost-of-living adjustment under section 1(f)(3) for the calendar year in which the taxable year begins, except that section 1(f)(3)(B) shall be applied by substituting '1995' for '1992'.

"(C) ROUNDING.—If any amount as adjusted under subparagraph (B) is not a multiple of $50, such amount shall be rounded to the nearest multiple of $50 (or if such amount is a multiple of $25, such amount shall be rounded to the next highest multiple of $50).

"(D) MODIFIED ADJUSTED GROSS INCOME.—The term 'modified adjusted gross income' means the adjusted gross income of the taxpayer for the taxable year determined—

"(i) without regard to this section and sections 911, 931, and 933, and

"(ii) after the application of sections 86, 135, 219, and 469.

"(4) INSTITUTION OF HIGHER EDUCATION.—The term 'institution of higher education' means an institution which—

"(A) is described in section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088), and

"(B) is eligible to participate in programs under title IV of such Act.

"(c) QUALIFIED HIGHER EDUCATION LOAN.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified higher education loan' means a loan to a student which is—

"(A) made, insured, or guaranteed by the Federal Government,

"(B) made by a State or a political subdivision of a State,

"(C) made from the proceeds of a qualified student loan bond under section 144(b), or

"(D) made by an institution of higher education (as defined in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a))).

"(2) LIMITATION.—

"(A) IN GENERAL.—The amount of interest on a qualified higher education loan which is taken into account under subsection (a)(2) shall be reduced by the amount which bears the same ratio to such amount of interest as—

''(i) the proceeds from such loan used for qualified higher education expenses, bears to

''(ii) the total proceeds from such loan.

''(B) QUALIFIED HIGHER EDUCATION EXPENSES.—For purposes of subparagraph (A), the term 'qualified higher education expenses' has the meaning given such term by subsection (b), except that—

''(i) such term shall include reasonable living expenses while away from home, and

''(ii) the limitations of paragraphs (2) and (3) of subsection (b) shall not apply.

''(d) COORDINATION WITH OTHER PROVISIONS.—

''(1) NO DOUBLE BENEFIT.—

''(A) IN GENERAL.—No deduction shall be allowed under subsection (a) for qualified higher education expenses or interest on qualified higher education loans with respect to which a deduction is allowed under any other provision of this chapter.

''(B) SAVINGS BOND EXCLUSION.—A deduction shall be allowed under subsection (a)(1)

for qualified higher education expenses only to the extent the amount of such expenses exceeds the amount excludable under section 135 for the taxable year.

''(2) QUALIFIED RESIDENCE INTEREST.—If a deduction is allowed under subsection (a)(2) for interest which is also qualified residence interest under section 163(h), such interest shall not be taken into account under section 163(h).

''(e) SPECIAL RULES.—

''(1) ELECTION.—If a deduction is allowable under more than one provision of this chapter with respect to qualified higher education expenses, the taxpayer may elect the provision under which the deduction is allowed.

''(2) LIMITATION ON TAXABLE YEAR OF DEDUCTION.—

''(A) IN GENERAL.—A deduction shall be allowed under subsection (a)(1) for any taxable year only to the extent the qualified higher education expenses are in connection with attendance at an institution of higher education during the taxable year.

''(B) CERTAIN PREPAYMENTS ALLOWED.—Subparagraph (A) shall not apply to qualified

higher education expenses paid during a taxable year which are in connection with attendance at an institution of higher education which begins during the first 2 months of the following taxable year.

''(3) ADJUSTMENT FOR CERTAIN SCHOLARSHIPS AND VETERANS' BENEFITS.—The amount of qualified higher education expenses otherwise taken into account under subsection (a)(1) with respect to the education of an individual shall be reduced (before the application of subsection (b)) by the sum of the amounts received with respect to such individual for the taxable year as—

''(A) a qualified scholarship which under section 117 is not includable in gross income,

''(B) an educational assistance allowance under chapter 30, 31, 32, 34, or 35 of title 38, United States Code, or

''(C) a payment (other than a gift, bequest, devise, or inheritance within the meaning of section 102(a)) for educational expenses, or attributable to attendance at an eligible educational institution, which is exempt from income taxation by any law of the United States.

''(4) NO DEDUCTION FOR MARRIED INDIVIDUALS FILING SEPARATE RETURNS.—If the taxpayer is a married individual (within the meaning of section 7703), this section shall apply only if the taxpayer and his spouse file a joint return for the taxable year.

''(5) REGULATIONS.—The Secretary may prescribe such regulations as may be necessary or appropriate to carry out this section, including regulations requiring recordkeeping and information reporting.''

(b) DEDUCTION ALLOWED IN COMPUTING ADJUSTED GROSS INCOME.—Section 62(a) is amended by inserting after paragraph (15) the following new paragraph:

''(16) HIGHER EDUCATION TUITION AND FEES.—The deduction allowed by section 219.''

(c) CONFORMING AMENDMENT.—The table of sections for part VII of subchapter B of chapter 1 is amended by striking the item relating to section 220 and inserting:

''Sec. 220. Higher education tuition and fees.
''Sec. 221. Cross reference.''

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

TITLE III—HIGH-WAGE JOBS FOR AMERICAN FAMILIES

Subtitle A—Business Incentives

SEC. 301. EXCLUSION FOR GAIN FROM SMALL BUSINESS STOCK.

(a) INCREASE IN EXCLUSION FOR CRITICAL TECHNOLOGIES SMALL BUSINESS STOCK HELD MORE THAN TEN YEARS.—

(1) IN GENERAL.—Subsection (a) of section 1202 (relating to exclusion for gain from certain small business stock) is amended to read as follows:

''(a) EXCLUSION.—In the case of a taxpayer other than a corporation, gross income shall not include the sum of—

''(1) 50 percent of any gain from the sale or exchange of qualified small business stock which is held for more than 5 years and to which paragraph (2) does not apply, plus

''(2) 100 percent of any gain from the sale or exchange of qualified small business stock—

''(A) which is held for more than 10 years, and

''(B) substantially all of the active business activities of which during substantially all of the taxpayer's holding period for such stock are in

connection with critical technologies (as defined in section 2491(6) of title 10, United States Code) or with environmental technologies for pollution minimization, remediation, or waste management.''

(2) CONFORMING AMENDMENTS.—Each of the following provisions are amended by striking ''50-Percent'':

(A) The heading for section 1202.

(B) The heading for section 1202(a).

(C) The item relating to section 1202 in the table of sections for part I of subchapter P of chapter 1.

(b) EXCLUSION LIMITED TO STOCK IN COMPANIES CREATING AMERICAN JOBS.—Section 1202(c) (defining qualified small business stock) is amended by adding at the end the following new paragraph:

''(4) UNITED STATES JOB REQUIREMENT.—Stock in a corporation shall not be treated as qualified small business stock unless, during substantially all of the taxpayer's holding period after December 31, 1996, at least 75 percent of employees hired after such date perform substantially all of their services for the corporation within the United States.''

(c) EFFECTIVE DATE.—The amendments made by this section apply to sales or exchanges after December 31, 1995, in taxable years ending after such date.

SEC. 302. PERMANENT EXTENSION OF RESEARCH CREDIT.

(a) IN GENERAL.—Section 41 of the Internal Revenue Code of 1986 (relating to credit for research activities) is amended by striking subsection (h).

(b) CONFORMING AMENDMENT.—Section 28(b)(1) of the Internal Revenue Code of 1986 is amended by striking subparagraph (D).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after June 30, 1995.

Subtitle B—Preservation of American Jobs

SEC. 311. TAXATION OF INCOME OF CONTROLLED FOREIGN CORPORATIONS ATTRIBUTABLE TO IMPORTED PROPERTY.

(a) GENERAL RULE.—Subsection (a) of section 954 (defining foreign base company income) is amended by striking ''and'' at the end of paragraph (4), by striking the period at the end of paragraph (5) and inserting '', and'', and by adding at the end the following new paragraph:

''(6) imported property income for the taxable year (determined under subsection (h) and reduced as provided in subsection (b)(5)).''

(b) DEFINITION OF IMPORTED PROPERTY INCOME.—Section 954 is amended by adding at the end the following new subsection:

''(h) IMPORTED PROPERTY INCOME.—

''(1) IN GENERAL.—For purposes of subsection (a)(6), the term 'imported property income' means income (whether in the form of profits, commissions, fees, or otherwise) derived in connection with—

''(A) manufacturing, producing, growing, or extracting imported property,

''(B) the sale, exchange, or other disposition of imported property, or

''(C) the lease, rental, or licensing of imported property.

Such term shall not include any foreign oil and gas extraction income (within the meaning of section 907(c)) or any foreign oil related income (within the meaning of section 907(c)).

''(2) IMPORTED PROPERTY.—For purposes of this subsection—

''(A) IN GENERAL.—Except as otherwise provided in this paragraph, the term 'imported

property' means property which is imported into the United States by the controlled foreign corporation or a related person.

''(B) IMPORTED PROPERTY INCLUDES CERTAIN PROPERTY IMPORTED BY UNRELATED PERSONS.—The term 'imported property' includes any property imported into the United States by an unrelated person if, when such property was sold to the unrelated person by the controlled foreign corporation (or a related person), it was reasonable to expect that—

''(i) such property would be imported into the United States, or

''(ii) such property would be used as a component in other property which would be imported into the United States.

''(C) EXCEPTION FOR PROPERTY SUBSEQUENTLY EXPORTED.—The term 'imported property' does not include any property which is imported into the United States and which—

''(i) before substantial use in the United States, is sold, leased, or rented by the controlled foreign corporation or a related person for direct use, consumption, or disposition outside the United States, or

''(ii) is used by the controlled foreign corporation or a related person as a component in other property which is so sold, leased, or rented.

''(3) DEFINITIONS AND SPECIAL RULES.—

''(A) IMPORT.—For purposes of this subsection, the term 'import' means entering, or withdrawal from warehouse, for consumption or use. Such term includes any grant of the right to use an intangible (as defined in section 936(b)(3)(B)) in the United States.

''(B) UNRELATED PERSON.—For purposes of this subsection, the term 'unrelated person' means any person who is not a related person with respect to the controlled foreign corporation.

''(C) COORDINATION WITH FOREIGN BASE COMPANY SALES INCOME.—For purposes of this section, the term 'foreign base company sales income' shall not include any imported property income.''

(c) SEPARATE APPLICATION OF LIMITATIONS ON FOREIGN TAX CREDIT FOR IMPORTED PROPERTY INCOME.—

(1) IN GENERAL.—Paragraph (1) of section 904(d) (relating to separate application of section with respect to certain categories of income) is amended by striking ''and'' at the end of subparagraph (H), by redesignating subparagraph (I) as subparagraph (J), and by inserting after subparagraph (H) the following new subparagraph:

''(I) imported property income, and''.

(2) IMPORTED PROPERTY INCOME DEFINED.—Paragraph (2) of section 904(d) is amended by redesignating subparagraphs (H) and (I) as subparagraphs (I) and (J), respectively, and by inserting after subparagraph (G) the following new subparagraph:

''(H) IMPORTED PROPERTY INCOME.—The term 'imported property income' means any income received or accrued by any person which is of a kind which would be imported property income (as defined in section 954(h)).''

(3) LOOK-THRU RULES TO APPLY.—Clause (i) of section 904(d)(3)(F) is amended by striking ''or (E)'' and inserting ''(E), or (H)''.

(d) TECHNICAL AMENDMENTS.—

(1) Clause (iii) of section 952(c)(1)(B) (relating to certain prior year deficits may be taken into ac-

count) is amended by inserting the following subclause after subclause (II) (and by redesignating the following subclauses accordingly):

"(III) imported property income,".

(2) Paragraph (5) of section 954(b) of such Code (relating to deductions to be taken into account) is amended by striking "and the foreign base company oil related income" and inserting "the foreign base company oil related income, and the imported property income".

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years of foreign corporations beginning after December 31, 1994, and to taxable years of United States shareholders within which or with which such taxable years of such foreign corporations end.

(2) SUBSECTION (c).—The amendments made by subsection (c) shall apply to taxable years beginning after December 31, 1994.

SEC. 312. DEBARMENT OF FEDERAL CONTRACTORS NOT IN COMPLIANCE WITH IMMIGRATION AND NATIONALITY ACT EMPLOYMENT PROVISIONS.

(a) POLICY.—It is the policy of the United States that—

(1) the heads of executive agencies in procuring goods and services should not contract with an employer that has not complied with paragraphs (1)(A) and (2) of section 274A(a) of the Immigration and Nationality Act (8 U.S.C. 1324a(a)) (hereafter in this section referred to as the ''INA employment provisions''), which prohibit unlawful employment of aliens; and

(2) the Attorney General should fully and aggressively enforce the antidiscrimination provisions of the Immigration and Nationality Act.

(b) ENFORCEMENT.—

(1) AUTHORITY.—

(A) IN GENERAL.— Using the procedures established pursuant to section 274A(e) of the Immigration and Nationality Act (8 U.S.C. 1324a(e)), the Attorney General may conduct such investigations as are necessary to determine whether a contractor or an organizational unit of a contractor is not complying with the INA employment provisions.

(B) COMPLAINTS AND HEARINGS.—The Attorney General—

(i) shall receive and may investigate any complaint by an employee of any such entity that alleges noncompliance by such entity with the INA employment provisions; and

(ii) in conducting the investigation, shall hold such hearings as are necessary to determine whether that entity is not in compliance with the INA employment provisions.

(2) ACTIONS ON DETERMINATIONS OF NONCOMPLIANCE.—

(A) ATTORNEY GENERAL.—Whenever the Attorney General determines that a contractor or an organizational unit of a contractor is not in compliance with the INA employment provisions, the Attorney General shall transmit that determination to the head of each executive agency that contracts with the contractor and the heads of other executive agencies that the Attorney General determines it appropriate to notify.

(B) HEAD OF CONTRACTING AGENCY.—Upon receipt of the determination, the head of a contracting executive agency shall consider the contractor or an organizational unit of the contractor for debarment, and shall take such other action as may be appropriate, in accordance with applicable procedures and standards set forth in the Federal Acquisition Regulation.

(C) NONREVIEWABILITY OF DETERMINATION.—The Attorney General's determination is not reviewable in debarment proceedings.

(c) DEBARMENT.—

(1) AUTHORITY.—The head of an executive agency may debar a contractor or an organizational unit of a contractor on the basis of a determination of the Attorney General that it is not in compliance with the INA employment provisions.

(2) SCOPE.—The scope of the debarment generally should be limited to those organizational units of a contractor that the Attorney General determines are not in compliance with the INA employment provisions.

(3) PERIOD.—The period of a debarment under this subsection shall be one year, except that the head of the executive agency may extend the debar-

ment for additional periods of one year each if, using the procedures established pursuant to section 274A(e) of the Immigration and Nationality Act (8 U.S.C. 1324a(e)), the Attorney General determines that the organizational unit of the contractor concerned continues not to comply with the INA employment provisions.

(4) LISTING.—The Administrator of General Services shall list each debarred contractor and each debarred organizational unit of a contractor on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs that is maintained by the Administrator. No debarred contractor and no debarred organizational unit of a contractor shall be eligible to participate in any procurement, nor in any nonprocurement activities, of the Federal Government.

(d) REGULATIONS AND ORDERS.—

(1) ATTORNEY GENERAL.—

(A) AUTHORITY.—The Attorney General may prescribe such regulations and issue such orders as the Attorney General considers necessary to carry out the responsibilities of the Attorney General under this section.

(B) CONSULTATION.—In proposing regulations or orders that affect the executive agencies, the Attorney General shall consult with the Secretary of Defense, the Secretary of Labor, the Administrator of General Services, the Administrator of the National Aeronautics and Space Administration, the Administrator for Federal Procurement Policy, and the heads of any other executive agencies that the Attorney General considers appropriate.

(2) FEDERAL ACQUISITION REGULATION.—The Federal Acquisition Regulatory Council shall amend the Federal Acquisition Regulation to the extent necessary to provide for implementation of the debarment responsibility and other related responsibilities assigned to heads of executive agencies under this section.

(e) INTERAGENCY COOPERATION.—The head of each executive agency shall cooperate with, and provide such information and assistance to, the Attorney General as is necessary for the Attorney General to perform the duties of the Attorney General under this section.

(f) DELEGATION.—The Attorney General, the Secretary of Defense, the Administrator of General Services, the Administrator of the National Aeronautics and Space

Administration, and the head of any other executive agency may delegate the performance of any of the functions or duties of that official under this section to any officer or employee of the executive agency under the jurisdiction of that official.

(g) IMPLEMENTATION NOT TO BURDEN PROCUREMENT PROCESS EXCESSIVELY.—This section shall be implemented in a manner that least burdens the procurement process of the Federal Government.

(h) CONSTRUCTION.—

(1) ANTIDISCRIMINATION.—Nothing in this section relieves employers of the obligation to avoid unfair immigration-related employment practices as required by—

(A) the antidiscrimination provisions of section 274B of the Immigration and Nationality Act (8 U.S.C. 1324b), including the provisions of subsection (a)(6) of that section concerning the treatment of certain documentary practices as unfair immigration-related employment practices; and

(B) all other antidiscrimination requirements of applicable law.

(2) CONTRACT TERMS.—This section neither authorizes nor requires any additional certification

provision, clause, or requirement to be included in any contract or contract solicitation.

(3) NO NEW RIGHTS AND BENEFITS.—This section may not be construed to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, including any department or agency, officer, or employee of the United States.

(4) JUDICIAL REVIEW.—This section does not preclude judicial review of a final agency decision in accordance with chapter 7 of title 5, United States Code.

(i) DEFINITIONS.—In this section:

(1) EXECUTIVE AGENCY.—The term ''executive agency'' has the meaning given that term in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).

(2) CONTRACTOR.—The term ''contractor'' means any individual or other legal entity that—

(A) directly or indirectly (through an affiliate or otherwise), submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a Federal Government contract, including a contract for carriage under Federal Government or commercial bills

of lading, or a subcontract under a Federal Government contract; or

(B) conducts business, or reasonably may be expected to conduct business, with the Federal Government as an agent or representative of another contractor.

SEC. 313. SENSE OF CONGRESS RELATING TO STOCK OPTIONS FOR EMPLOYEES WHO ARE LAID OFF.

(a) FINDINGS.—The Congress finds that—

(1) the rationale behind many corporate downsizings is to increase earnings and thereby increase the value of the stock of the corporation,

(2) corporate managers have ample experience in granting stock incentives to themselves, and

(3) employees who are laid off in the corporate downsizings should benefit from the increase in value of corporate stock attributable to their losing their jobs.

(b) SENSE OF CONGRESS.—It is the sense of the Congress that employees who are laid off in a corporate downsizing should be given stock options at the time of their termination which may be exercised at a price equal to the value of the stock on the day before the downsizing is announced.

Subtitle C—Promotion of Long-Term Investments in American Businesses

PART I—LONG-TERM INVESTMENT, COMPETITIVENESS, PENSION PROTECTION, AND CORPORATE TAKEOVER REFORM

SEC. 321. FINDINGS.

The Congress makes the following findings:

(1) Managers of American corporations have been criticized for their short-term focus, leading to a lack of investment in research and development, and plants and equipment that are necessary to maintain our competitive position worldwide.

(2) The short-term horizon of our corporate managers can be traced, in part, to changes in the capital markets away from ownership by individuals to ownership by large pension funds and institutional investors, and in part to threats of hostile takeovers.

(3) Pension funds, with assets of almost $2,000,000,000,000, and institutional investors are playing an ever increasing role in the country's economic system, with estimates that by the year 2000, as much as two-thirds of all corporate equities will be held by pension funds. The pressure on such pen-

sion fund managers and other institutional investors to perform better than the market and the high turnover rate in some pension funds has raised concerns that the accumulation of large blocks of stock in fewer hands may be contributing to the number of mergers and acquisitions and to a shorter term focus on the part of management.

(4) The surplus assets in many company pension plans have too often become tools in the financing of takeovers and leveraged buy outs, a practice which placed the pensions of workers at an unacceptable risk.

(5) Too little emphasis has been placed on ensuring the fair treatment and job security of workers following a takeover or leveraged buy out.

(6) On an aggregate basis, corporate takeovers and leveraged buy outs have been a factor in an enormous increase in corporate debt. Debt for nonfinancial businesses rose from $500,000,000,000 in 1970 to $3,100,000,000,000 by the end of the third quarter of 1988, a more than sixfold increase. In addition, for the period 1984 through the third quarter of 1988, a total of $794,000,000,000 of corporate debt has been added, while a total of

$422,300,000,000 of corporate equity has been withdrawn.

(7) The large amount of debt incurred by corporations either as a result of, or to stave off, takeovers or leveraged buy outs has resulted in a decrease in research and development budgets and needed investments in plant improvements and equipment at a time when United States industry is struggling to maintain its international competitiveness.

(8) Long-term investment and planning are essential to sustained economic growth, yet numerous economic factors are pushing corporate managers and investors to take an increasingly short-term view.

(9) The integrity of our financial markets and the confidence of the public in them have been undermined by the conduct of parties in tenders offers and leveraged buy outs.

(10) Therefore, in order to protect the public interest, it is necessary to correct inadequacies in, and curb abuses of, our existing securities laws.

SEC. 322. LONG-TERM INVESTMENTS AND PENSION PROTECTION.

(a) ANTICHURNING RULE.—Section 406(a)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1106(a)(1)) is amended—

(1) by striking ''or'' at the end of subparagraph (D),

(2) by striking the period at the end of subparagraph (E) and inserting a semicolon, and

(3) by adding at the end the following new subparagraph:

''(F) sale or disposition of—

''(i) stock or securities (as defined in section 29(a)(36) of the Investment Company Act of 1940), or

''(ii) options, futures, or forward contracts, which were held for less than 3 months unless less than 30 percent of such plan's gross income for the fiscal year is derived from such sale or disposition.''

(b) ERISA AMENDMENTS.—

(1) Section 404 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104) is amended by adding at the end the following:

''(d) In voting on a merger, combination, or sale of substantially all the assets of, or in tendering or refraining

from tendering securities in a tender offer for, a publicly owned business the securities of which constitute assets of a plan, a fiduciary shall take into consideration the long-term as well as the short-term interests of the participants and beneficiaries of the plan and shall not be deemed to have violated this part solely because the fiduciary takes such interests into consideration.''

(2) Section 4044 of such Act (29 U.S.C. 1344) is amended by adding at the end the following new subsection:

''(e)(1) Notwithstanding subsection (d)(1), a distribution otherwise permitted pursuant to such subsection shall be prohibited for a period of 5 years following:

''(A) any acquisition of the securities of the employer pursuant to a tender offer subject to section 14(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(d)) by any person, or

''(B) any acquisition of the securities of the employer in a transaction to which section 13(e) of such Act (15 U.S.C. 78m(e)) applies;

''(2) Notwithstanding subsection (d)(1) and subject to paragraph (3), a distribution otherwise permitted pursuant to such subsection shall be prohibited if any part of the residual assets of the plan are used to finance, directly or indirectly—

''(A) any acquisition of the securities of the employer pursuant to a tender offer subject to section 14(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(d)) by any person, or

''(B) any acquisition of the securities of the employer in a transaction to which section 123(e) of such Act (15 U.S.C. 78m(e)) applies,

including the repayment, redemption, or refinancing of any indebtedness incurred by such person in connection with any such acquisitions.

''(3) Paragraph (1) does not apply to a transaction described in section 4980(c)(3) of the International Revenue Code of 1986 (as in effect on the date of enactment of this subsection) if—

''(A) the transfer of assets to the plan is approved by a majority vote of all participants of the employer plan;

''(B) prior to the vote, there is disclosure to the participants of all material facts concerning the transfer of assets to the plan and the acquisition of employer securities by the plan, including—

''(i) the terms of the employee stock ownership plan,

''(ii) the terms of the plan from which the assets are being transferred, and

''(iii) whether or not a new plan will be established in place of the plan from which the assets are being transferred; and

''(C) the vote by the participants is confidential, and takes place within a reasonable period of time following the disclosure required under subparagraph (B).

SEC. 323. PROTECTION OF WORKERS.

Section 14(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(d)) is amended by adding at the end the following:

''( )(A) Any person who acquires ownership or control of any plant, facility, or other property of an issuer, either directly in his own name or indirectly, through a transaction in response, or otherwise related, to the filing of a statement under section 13(d) of this title announcing an intent to seek a change in control of the issuer or a statement under this section announcing a tender offer for the issuer's securities shall have the following minimum statutory obligations to the employees of the plant, facility or property who are, at the time the transaction is consummated, covered by a collective bargaining agreement (the 'preacquisition agreement'):

''(i) If the acquiring person uses the plant, facility, or property in a manner which is not fundamentally different from its preacquisition use, the person—

''(I) shall abide by the terms of the preacquisition agreement, regardless of its expiration date, for a period of 180 days after the date the acquirer commences operations at the plant, facility or property; and

''(II) shall, if the preacquisition agreement was not due to expire within one year of the date of the consummation of the acquisition transaction, negotiate in good faith with the employees' exclusive bargaining representative for a collective bargaining agreement covering the unexpired term of the preacquisition agreement and shall submit to binding arbitration on all unresolved issues if the parties are unable, within 120 days of the acquisition, to negotiate a new agreement.

''(ii) If the acquiring person uses the plant, facility or property in a manner which is fundamentally different from its preacquisition use,

the acquirer shall provide to any employee, who was covered by the preacquisition agreement and whose employment is involuntarily terminated by reason of the acquisition transaction, severance pay in an amount equal to six times his monthly compensation at the time of termination.

''(B) In the event of arbitration of unresolved issues pursuant to subparagraph (A)(i)(II), the parties shall select an arbitrator from a special roster of arbitrators prepared by an appropriate agency of the Federal Government which engages in the mediation and conciliation of labor-management disputes in the industry designated by the Secretary of Labor and the arbitrator shall within the 180-day period stated in subparagraph (a)(i)(I) issue a final and binding award on all unresolved issues, based upon the acquiring person's experience under the terms of the preacquisition agreement and on collective bargaining agreements covering comparable plants, facilities and properties.

''(C) For purposes of this paragraph—

''(i) the property of an issuer includes property owned by an entity controlled by the issuer;

"(ii) the obligations created herein apply to each succeeding transferee of the issuer's property in the same manner as to the original acquirer of the property by reason of a transaction covered by subparagraph (A); and

"(iii) any condition, stipulation, or provision in any contract purporting to waive the rights and obligations created in this section shall be void.

"(D) Any person seeking to enforce the rights and obligations created by this section may sue at law or in equity in any court of competent jurisdiction. In any suit under this subsection, the court may, in its discretion, assess reasonable costs, including attorneys' fees in favor of the prevailing party."

SEC. 324. WILLIAMS ACT REFORMS.

(a) 10-DAY WINDOW.—Section 13(d)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(d)(1)) is amended—

(1) by striking "shall, within ten days after such acquisition" and inserting "shall, within 5 days after such acquisition";

(2) by inserting after ''send to each exchange'' the following: ''and registered national securities association''; and

(3) by adding at the end the following: ''Any person required to send and file such a statement may not acquire or agree to acquire, directly or indirectly, the beneficial ownership of any additional amount of such equity securities after the transaction that required such person to send and file such statement until after such statement has been filed with the Commission.''

(b) TENDER OFFERS.—Section 14(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(d)) is amended—

(1) by redesignating paragraphs (2) through (8) as paragraphs (6) through (12), and

(2) by inserting after paragraph (1) the following new paragraphs:

''(2) Any person making a tender offer for or a request or invitation for tender offers of any class of any such equity security shall hold such offer, request, or invitation open for a period of at least forty-five business days from the date on which such offer, request, or invitation is first published, sent, or given to security holders, or

such longer period as the Commission may, by rule, prescribe.

''(3) In the case of a well-financed offer, the preceding sentence shall be applied by substituting 'thirty' for 'forty-five'. For the purpose of the preceding sentence, a well-financed offer is an offer that would not, if consummated, constitute a highly leveraged transaction as defined by the appropriate regulatory agencies (other than the Commission).

''(4)(A) If, during the forty-five-day period described in paragraph (2), a qualified employee stock ownership plan notifies the offeror, the issuer, or the Commission, of the plan's intent to acquire additional securities of the issuer on terms which are substantially equivalent to other offers, paragraph (2) shall be applied by substituting 'ninety-five' for 'forty-five'.

''(B) For purposes of this subsection, the term 'qualified employee stock ownership plan' means an employee stock ownership plan defined in section 4975(e)(7) of the Internal Revenue Code of 1986 which—

''(i) is sponsored by the issuer (or a member of the controlled group) of the equity securities to which the request or invitation for tenders described in paragraph (1) is made,

''(ii) meets the requirements of section 410(b) of the Internal Revenue Code of 1986, and

''(iii) owns securities of the issuer representing at least 5 per centum of the outstanding voting securities (of the issuer) on the day on which the forty-five-day period begins to run and has held such 5 per centum for a period beginning at least six months before such forty-five-day period begins to run.

''(C) The provisions of this paragraph shall not apply to any acquisition or proposed acquisition of a security if—

''(i) the acquisition of such security, together with all other acquisitions by the same person of securities of the same class during the preceding 12 months, would not exceed 2 per centum of that class;

''(ii) a block of 10 per centum or more of the outstanding shares is acquired and such shares were held by the seller for at least 2 years prior to the sale;

''(iii) such acquisition is from one family member to another;

''(iv) such acquisition is made by a person who owned more than 50 per centum of the outstanding shares prior to such purchase; or

''(v) the Commission, by rule or regulation, or by order, has exempted such acquisition from the provisions of this subsection as it determines to be necessary or appropriate and consistent with the public interest, the protection of investors, and the purposes of this paragraph.''

(c) CONFORMING AMENDMENT.—Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n) is amended by striking the heading of such section and inserting the following:

''PROXIES AND TENDER OFFERS''.

SEC. 325. ANTI-GREENMAIL/SHORT-SWING PROFITS.

Section 16 of the Securities Exchange Act of 1934 (15 U.S.C. 78p) is amended—

(1) in the caption, by striking ''**AND PRINCIPAL STOCKHOLDERS**'' and inserting ''**PRINCIPAL STOCKHOLDERS AND HOLDERS OF MORE THAN 5 PER CENTUM**'';

(2) in subsection (b)—

(A) by inserting ''(1)(A)'' after ''(b)''; and

(B) by striking ''Suit'' and all that follows through the end period and inserting the following:

''(B) For the purpose of discouraging manipulative tender offer practices, any profit realized by any person from any disposition, directly or indirectly, of equity securities described in section 13(d)(1), shall inure to and be recoverable by the issuer of such securities, if such person, (i) was the beneficial owner, at the time of such disposition, of more than 5 per centum of the class of securities so disposed of, (ii) made a tender offer for such securities within 6 months preceding the disposition, and (iii) had held any or all of such securities for less than six months prior to the disposition thereof. The preceding sentence does not apply if (I) such disposition was a purchase by the issuer of the securities and has been approved by the affirmative vote of a majority of the aggregate outstanding voting securities of the issuer, or (II) the same offer to purchase is made available to all shareholders.

''(2) Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the issuer, or by the owner of any security of the issuer in the name and in behalf of the issuer if the issuer shall fail or refuse to bring such suit within 60 days after request or shall fail diligently to prosecute the same thereafter; but no such suit shall be brought more than 2 years after the date such profit was realized. This subsection shall not be construed to cover any transaction where such

beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security involved, or any transaction or transactions which the Commission by rules and regulations may exempt as not comprehended within the purpose of this subsection.

''(3) The Commission shall, by rule, regulation, or by order upon application, conditionally or unconditionally exempt any person, security, or transaction from any or all of the provisions of paragraph (1)(B) as it determines to be necessary or appropriate and consistent with the public interest, the protection of investors, and the purposes of this subsection.''

SEC. 326. ADDITIONAL RESERVE REQUIREMENTS.

(a) IN GENERAL.—Each appropriate Federal banking agency shall review the exposure to risk of United States depository institutions arising from the medium- and long-term loans made by such institutions that are outstanding in connection with highly leveraged transactions, as defined by the appropriate Federal banking agency. Each agency shall provide directions to such institutions regarding additions to general reserves, if the agency determines that such additions to general reserves are necessary to protect the safety and soundness of the institution, based on a determination by the agency that

such institution's loans with respect to highly leveraged transactions are unduly concentrated.

(b) DETERMINATION OF INSTITUTIONAL EXPOSURE TO RISK.—In determining the exposure of an institution to risk for purposes of subsection (a), the appropriate Federal banking agency—

(1) may exempt, in full or in part, from reserve requirements established pursuant to subsection (a), any loan that is secured, in whole or in part, by appropriate collateral for payment of interest or principal; and

(2) take into account any other factors which bear on such exposure and the particular circumstances of the institution.

(c) TIMING AND REPORT.—

(1) DETERMINED BY AGENCY.—Except as provided in paragraph (3), each appropriate Federal banking agency shall determine the timing of any addition to reserves required by subsection (a).

(2) REPORT.—Each appropriate Federal banking agency shall transmit to the Congress not later than December 1 of each year a report on the actions taken pursuant to this section.

(3) DEADLINE.—Each Federal agency required to undertake a review described in subsection (a)

shall complete the review not later than December 31, 1990.

(d) DEFINITION.—As used in this section, the term ''appropriate Federal banking agency'' means the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, and the Board of Governors of the Federal Reserve System.

SEC. 327. LEVERAGED BUYOUT AND GOING PRIVATE TRANSACTIONS.

Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n) is amended by adding at the end thereof the following new subsection:

''(h)(1) It shall be unlawful for one or more officers, directors, employees, or affiliates of an issuer of any security which is registered pursuant to section 12 of this title, or which would have been required to be so registered except for the exemption contained in section 12(g)(2)(G) of this title, or of any closed-end investment company registered under the Investment Company Act of 1940, to acquire all or substantially all of the shares of a class of such issuer's or such company's equity securities unless—

''(A) at least forty-five days have elapsed between the day on which the proposed acquisition is publicly announced and the day on which the acquisition occurs;

''(B) such issuer or company has obtained a report by an independent appraiser, as provided in paragraph (2), on the proposed acquisition; and

''(C) the report is made available to all shareholders and all members of the board of directors of the issuer in accordance with such rules as the Commission may prescribe, but not later than twenty days before the day on which the acquisition occurs.

''(2) For the purpose of paragraph (1)(B), any officers, directors, employees, or affiliates intending to purchase all or substantially all of the shares of a class of such issuer's or such company's equity securities shall obtain an independent appraisal of such issuer from a nationally accredited accounting firm which has no financial interest in the outcome of such restructuring transaction and whose fees for performing such appraisal are not related to the outcome of such restructuring transaction. Any firm preparing an appraisal pursuant to this subparagraph shall be given access by the issuer to any and all of the issuer's books, records and premises.

''(3) For the purpose of this subsection, the term 'affiliate' means any person who becomes affiliated with one or more of the officers, directors or employees of the issuer in a transaction in which such officer, director or employee will own, in the aggregate, directly or indirectly, within

3 years of such purchase of such equity security, 5 per centum or more of the equity of the surviving corporation or continuing business.''

SEC. 328. FIRM FINANCING AND FINANCING DISCLOSURES.

(a) FINANCING OF TAKEOVERS.—Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n), as amended by section 327, is amended by adding at the end thereof the following new subsection:

''(i)(1) It shall be unlawful for any person, directly or indirectly, by use of the mails or by any means or instrumentality of interstate commerce or of any facility of a national securities exchange or otherwise, to make a tender offer for, or a request or invitation for tenders of, any equity security of a class described in subsection (d)(1) of this section unless 50 per centum or more of the consideration to be offered consists of cash. For purposes of the preceding sentence, 50 per centum or more of the consideration shall qualify as cash, if—

''(A) such cash is at the time of announcement of the tender offer on deposit in an account of the tendering person at a bank or trust company organized under the laws of the United States, or the District of Columbia; or

''(B) the offering person has entered into a legally enforceable, unconditional, and irrevocable

commitment (not subject to execution of a further definitive agreement) to provide such cash from such bank or trust company, which commitment is not contingent in any manner upon the success or failure of such tender offer or request or invitation for tenders.

''(2) The provisions of paragraph (1) shall not apply to a tender offer for, or a request or invitation for tenders—

''(A) of equity securities of the tendering person,

''(B) of equity securities of a class the total value of which is less than $100,000,000, or

''(C) in connection with borrowings or the incurrence of debt or the issuance of bonds, notes, debentures, participations, other debt securities, or other obligations to pay money (or money's worth in one or more other forms) to provide for the purchase of 'qualifying employee security' purchased or acquired by an 'employer stock ownership plan' (as defined in section 4975(e)(7) of the Internal Revenue Code of 1986).

''(3) The Board of Governors of the Federal Reserve System, in consultation with the Commission, shall prescribe rules and regulations to effectuate the purpose of

this subsection. The Board of Governors is empowered to grant exceptions to the provisions of this subsection by order. In acting on an application for an exception, the Board of Governors shall consider the positive economic aspects of the transaction, the fairness of the transaction to shareholders, debtholders, and creditors of both the acquired and acquiring corporation, and the economic dislocation, including unemployment risks, likely to be caused by consummation of the transaction. The Board of Governors shall respond affirmatively or negatively within 20 business days after receiving an application for an exception. Decisions of the Board of Governors denying such exceptions shall not be reviewable in any court, nor shall they be considered by any court by reason of any extraordinary writ or remedy.

''(4)(A) Any person that violates or conspires to violate paragraph (1) of this subsection shall be subject to a civil penalty of not less than 5 per centum of the borrowings such person has publicly represented it would need to fund the entire proposed transaction.

''(B) On application by any person, any United States district court may issue an injunction or other order to prevent a violation of this subsection.''

(b) FINANCING DISCLOSURES.—Section 13(d)(1)(B) of the Securities Exchange Act of 1934 (15 U.S.C.

78m(d)(1)(B)) is amended by striking out ''security, a description of the transaction and the names of the parties thereto, except that where a source of funds is a loan made in the ordinary course of business by a bank, as defined in section 3(a)(6) of this title, if the person filing such statement so requests, the name of the bank shall not be made available to the public'' and inserting in lieu thereof the following: ''security—

''(i) a summary of each agreement or arrangement relating to the extension of credit, the issuance of securities for cash, or the other acquisition of such funds, including the identity of the parties, the term, the collateral, the stated and effective interest rates, all fees to be paid in connection with the agreement or arrangement to any person providing or arranging for the provision of such funds or other consideration, and all other material terms or conditions relative to such loan agreement or arrangement; and

''(ii) any plans or arrangements to finance or repay any amount of such funds representing indebtedness incurred or to be incurred, or if no such plans or arrangements have been made, a statement to that effect.''

(c) ITEMIZED STATEMENT OF EXPENSES.—Section 13(d)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(d)(1)) is amended—

(1) by striking ''and'' at the end of subparagraph (D);

(2) by striking the period at the end of subparagraph (E) and inserting ''; and''; and

(3) by inserting after subparagraph (E) the following:

''( ) a reasonably itemized statement of all expenses incurred or estimated to be incurred in connection with the acquisition of such beneficial ownership, including expenses for legal, accounting, financing, and investment banking services, filing fees, and all other similar fees and expenses, indicating whether or not such person has paid or will be responsible for paying any or all such expenses.''

(d) DISCLOSURE OF EXPENSES.—Section 14(d)( ) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(d)(8)) is amended by adding at the end the following: ''Such rules and regulations shall require appropriate disclosures by officers or directors of the issuer of all expenses incurred or estimated to be incurred in connection with the tender offer or request or invitation for tenders, including expenses for legal, accounting, financial,

and investment banking services, filing fees, and all other similar fees and expenses, indicating whether or not such person has paid or will be responsible for paying any or all such expenses.''

SEC. 329. ROLE OF STATE LAW.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding at the end thereof the following:

''ROLE OF STATE LAW

''SEC. 36. The Congress declares that the internal affairs or governance of corporations shall be subject to regulation by the laws of the State under which such corporation is organized. Nothing contained in section 13 or 14 of this title or any rules or regulations thereunder shall be construed to invalidate, impair, or supersede any law enacted by any State regulating the internal affairs or governance or contests for control of any corporation organized under its laws, except where compliance with such law would preclude compliance with the filing, disclosure, procedural, or antifraud requirements of sections 13 and 14 of this title.''

PART II—RESTRICTIONS ON HARMFUL TAKEOVERS

SEC. 331. DISALLOWANCE OF DEDUCTION FOR MERGER AND ACQUISITION EXPENSES.

(a) DEDUCTION DISALLOWED.—Part IX of subchapter B of chapter 1 of subtitle A (relating to items not deductible) is amended by adding at the end the following new section:

"SEC. 280I. DISALLOWANCE OF DEDUCTION FOR MERGER AND ACQUISITION EXPENSES.

"(a) IN GENERAL.—No deduction otherwise allowable under this chapter shall be allowed for any amount paid or incurred in connection with an applicable acquisition.

"(b) APPLICABLE ACQUISITION.—For purposes of this section—

"(1) IN GENERAL.—The term 'applicable acquisition' means the acquisition by a person of ownership interests in, or assets used in the active conduct of a trade or business by, an entity if—

"(A) such acquisition occurs during the 3-year period ending on the date the person acquires control of the entity or the person acquires more than one-half of the assets used in the trade or business, and

''(B) there is a 15 percent or greater reduction in employees of such entity or trade or business in connection with such acquisition.

''(2) EXCEPTIONS.—The term 'applicable acquisition' shall not include—

''(A) except as provided in paragraph (3), any acquisition by a person from an entity which it controls (or which controlled it) immediately before the acquisition, or

''(B) any acquisition described in clause (i), (ii), or (iii) of section 382(l)(3)(B).

''(3) RELATED TRANSACTIONS.—The term 'applicable acquisition' shall include any acquisition after the acquisition described in paragraph (1)(A) if such acquisitions are part of a series of related transactions.

''(c) OTHER DEFINITIONS AND RULES.—For purposes of this section:

''(1) CONTROL.—A person shall be treated as in control of another entity if—

''(A) in the case of a corporation, it possesses more than 50 per centum of the stock of the corporation (by vote or value), or

''(B) in the case of any other entity, it possesses ownership interests representing more

than 50 per centum of the capital or profits interest in the entity.

''(2) CONSTRUCTIVE OWNERSHIP RULES.—

''(A) IN GENERAL.—For purposes of paragraph (1), the following rules shall apply:

''(i) in the case of a corporation, the rules of section 267(c);

''(ii) in the case of a partnership, the rules of section 707(b); and

''(iii) in the case of any other entity, rules prescribed by the Secretary based on the principles of the rules described in clauses (i) and (ii).

''(B) OPTIONS.—Except as provided in regulations, a person shall be treated as possessing stock or assets if the person has an option to acquire the stock or assets.

''(3) RELATED PARTIES.—All persons treated as the employer under subsection (a) or (b) of section 52 shall be treated as 1 person for purposes of this section.''

(b) CLERICAL AMENDMENT.—The table of sections for such part IX is amended by adding after the item relating to section 280H the following new item:

''Sec. 280I. Disallowance of deduction for merger and acquisition expenses.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred after December 31, 1996, for taxable years ending after such date.

PART III—OTHER PROVISIONS

SEC. 341. $1,000,000 COMPENSATION DEDUCTION LIMIT EXTENDED TO ALL EMPLOYERS OF ALL CORPORATIONS.

(a) IN GENERAL.—Section 162(m) is amended—

(1) by striking ''publicly held corporation'' in paragraph (1) and inserting ''taxpayer (other than personal service corporations)'',

(2) by striking ''covered employee'' each place it appears in paragraphs (1) and (4) and inserting ''employee'', and

(3) by striking paragraphs (2) and (3) and redesignating paragraph (4) as paragraph (2).

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995, except that there shall not be taken into account with respect to any employee to whom section 162(m) of the Internal Revenue Code of 1986 applies solely by reason of such amendments remuneration payable under a written binding contract which was in effect on

October 25, 1995, and which was not modified thereafter in any material respect before such remuneration is paid.

SEC. 342. LEVEL OF PARTICIPATION IN GUARANTEED LOANS UNDER EXPORT WORKING CAPITAL PROGRAM.

Section 7(a)(2) of the Small Business Act (15 U.S.C. 636(a)(2)) is amended by adding at the end the following new subparagraph:

"(D) PARTICIPATION UNDER EXPORT WORKING CAPITAL PROGRAM.—Notwithstanding subparagraph (A), in an agreement to participate in a loan on a deferred basis under the Export Working Capital Program established pursuant to paragraph (14)(A), such participation by the Administration shall be equal to the rate specified under this paragraph as in effect on the day before the date of the enactment of this subparagraph."

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 401. DEDUCTION FOR LOCAL SEWER AND WATER FEES.

(a) IN GENERAL.—Subsection (b) of section 164 is amended by redesignating paragraphs (3) and (4) as para-

graphs (4) and (5), respectively, and by inserting after paragraph (2) the following new paragraph:

''(3) DEDUCTION ALLOWED FOR LOCAL SEWER AND WATER FEES.—

''(A) IN GENERAL.—To the extent that the amount of local sewer and water fees paid or accrued during any taxable year exceeds 1 percent of adjusted gross income, such fees shall be allowed as a deduction under subsection (a) in the same manner as local real property taxes.

''(B) DEFINITION.—For purposes of subparagraph (A), the term 'local sewer and water fees' means any amount imposed by a local government, State government (or any agency or instrumentality thereof), or by the District of Columbia as a charge for sewer or water service. Such term shall not include any amount allowable as a deduction without regard to this paragraph.''

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1995.

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